

No. 2894

United States *8*

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

THE UNITED STATES OF AMERICA,
Appellant,

vs.

GRAND CANYON CATTLE COMPANY, a Cor-
poration,
Appellee,

VOLUME I.
(Pages 1 to 320, Inclusive.)

Upon Appeal from the United States District Court for the District
of Arizona.

Filed

JAN 16 1917

F. D. Monckton,
Clerk.

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Circuit Court of Appeals

For the Ninth Circuit.

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THE UNITED STATES OF AMERICA,
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vs.

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Appellee,

VOLUME I.
(Pages 1 to 320, Inclusive.)

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of Arizona.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States for the
District of Arizona.*

No. 49—IN EQUITY.

THE UNITED STATES,

Plaintiff,

vs.

B. F. SAUNDERS, THE GRAND CANYON
CATTLE COMPANY, and ORA HALEY,
Defendants.

Bill of Complaint.

To the Judge of the District Court of the United
States for the District of Arizona, Ninth Judi-
cial Circuit:

The United States, by the Attorney General,
brings this bill of complaint against B. F. Saunders,
whose first name is to the plaintiff unknown, a resi-
dent of the State of Utah, the Grand Canyon Cattle
Company, a corporation existing under and by vir-
tue of the laws of the State of California, and Ora
Haley, a resident of Wyoming, and thereupon com-
plains and shows unto your Honor:

I.

On and prior to the 24th day of October, [1*]
1901, the plaintiff was the owner in fee simple, as
a part of its public domain, of a certain tract of
land containing 19.421 acres situated in Coconino
County in the then Territory and now State of Ari-
zona and more particularly described hereinafter,

*Page-number appearing at foot of page of original certified Tran-
script of Record.

and on said date the said defendant, B. F. Saunders located the said land under the mining laws of the United States contained in Title XXXII, Chapter 6 of the Revised Statutes as amended, and designated the same as "Jacob lode claim" and thereafter, to wit, on August 8, 1904, the said B. F. Saunders filed in plaintiff's local land office at Phoenix, Arizona, his application for a patent for said tract of land, wherein he alleged and represented that the same contained gold and silver and that he had made mining improvements thereon to the value of \$550. The said B. F. Saunders subsequently filed in plaintiff's said local land office his application to purchase said tract of land and paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on November 3, 1904, issued to the said B. F. Saunders final certificate of entry No. 626, and thereafter on the 18th day of March, 1907, a patent was issued to the said B. F. Saunders conveying to him the legal title to said land designated by the Surveyor General as Lot No. 1923, and particularly described as follows: [2]

Beginning at corner No. 1 a pine post four feet long, four inches square marked 1-1923 in mound of stone, from which U. S. Location Monument No. 1 bears south forty degrees and forty-seven minutes west six thousand one hundred and forty-seven and two-tenths feet distant.

Thence, first course, north four degrees and thirty-five minutes west one thousand four hundred and ten feet to corner No. 2 a pine post four

feet long, four inches square marked 2-1923 in mound of stone.

Thence, second course, north eighty-five degrees and twenty-five minutes east six hundred feet to corner No. 3 a pine post four feet long, four inches square marked 3-1923 in mound of stone, from which discovery monument bears south twenty-five degrees and thirty-eight minutes west five hundred and ninety-six feet distant.

Thence, third course, south four degrees and thirty-five minutes east one thousand four hundred and ten feet to corner No. 4 a pine post four feet long, four inches square marked 4-1923 in mound of stone.

Thence, fourth course, south eighty-five degrees and twenty-five minutes west six hundred feet to corner No. 1, the place of beginning, said lot No. 1923 extending one thousand four hundred and ten feet in length along said Jacob vein or lode and containing nineteen acres and four hundred and twenty-one thousandths of an acre of land more or less.

II.

On and prior to the 27th day of June, 1905, the plaintiff was the owner in fee simple, as a part of its public domain, of a certain tract of land containing 17.25 acres situated in Coconino County in the then Territory and now State of Arizona and more particularly described hereinafter, and on said date the said defendant B. F. Saunders located the said land

under the said mining laws of the United States and designated the same [3] as "Emmett lode claim" and thereafter to wit, on the 13th day of December, 1905, the said B. F. Saunders filed in plaintiff's said local land office at Phoenix, Arizona, his application for patent for said tract of land wherein he alleged and represented that the same contained gold, silver, copper, lead and other valuable minerals, and that he had made mining improvements thereon to the value of \$500. The said B. F. Saunders subsequently filed in plaintiff's local land office his application to purchase said tract of land and paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on March 23, 1906, issued to the said B. F. Saunders final certificate of entry No. 153, and thereafter, to wit, on October 20, 1906, a patent was issued to the said B. F. Saunders conveying to him the legal title to the said land designated by the surveyor-general as Lot 2141 and particularly described as follows:

Beginning at corner No. 1, a pine post four feet long, four inches square marked 1-2141 with mound of stones, from which U. S. location monument No. 3 bears north seventy-five degrees and thirty-four minutes west three thousand and thirty-seven and nine-tenths feet distant.

Thence, first course, south twenty-two degrees and forty-one minutes west one thousand two hundred and thirty-six feet to corner No. 2, a pine post four feet long, four inches square

marked 2-2141 with mound of stones.

Thence, second course, south sixty-seven [4] degrees and five minutes east six hundred feet to corner No. 3, a pine post four feet long, four inches square marked 33-2141 with mound of stones, from which discovery bears north three degrees, five minutes and thirty seconds west six hundred and eighty-nine and nine-tenths feet distant.

Thence, third course, north twenty-two degrees and forty-one minutes east one thousand two hundred and thirty-six feet to corner No. 4, a pine post four feet long four inches square marked 4-2141 with mound of stone.

Thence, fourth course, north sixty-seven degrees and five minutes west six hundred feet to corner No. 1, the place of beginning; said lot No. 2141 extending one thousand two hundred and thirty-six feet in length along said Emmett vein or lode, and containing seventeen acres and twenty-five thousandths of an acre of land, more or less.

III.

On and prior to the 27th day of June, 1905, the plaintiff was the owner in fee simple, as a part of its public domain, of a certain tract of land containing 15.495 acres situated in Coconino County in the then Territory and now State of Arizona and more particularly described hereinafter, and on said date the said defendant B. F. Saunders located the said land under the said mining laws of the United States and designated the same as "Noonday lode claim"

and thereafter, to wit, on March 23, 1906, the said B. F. Saunders filed in plaintiff's said local land office at Phoenix, Arizona, his application for a patent for said tract of land wherein he alleged and [5] represented that the same contained gold, silver, copper, lead and other valuable minerals, and that he had made mining improvements thereon to the value of \$600. The said B. F. Saunders subsequently filed in plaintiff's said local land office his application to purchase said tract of land and paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on June 21, 1906, issued to the said B. F. Saunders final certificate of entry No. 170 and thereafter, to wit, on the 22d day of June, 1907, patent was issued to the said B. F. Saunders conveying to him the legal title to the said land designated by the surveyor-general as Lot No. 2140 and particularly described as follows

Beginning at corner No. 1 a pine post four feet long, four inches square marked 1-2140 in mound of stone from which U. S. Location Monument No. 5 bears south one degree and fifty-two minutes east, four hundred and eighty-five and two-tenths feet distant, and discovery bears south fifty-two degrees and fifty-five minutes east three hundred and forty-seven and two-tenths feet distant.

Thence, first course, north eighty-six degrees and sixteen minutes east three hundred feet to witness corner to corner No. 2 a cedar post four feet long, four inches square marked W.

C. 2-2140 in mound of stone, six hundred feet to corner No. 2 on ledge and not established.

Thence second course, south five degrees and thirty-five minutes west eight hundred and ninety-six feet to pine post four feet long, four inches square, marked W. C. 2-2140 in mound of stone, one thousand one hundred and forty feet to corner No. 3, a cedar post four feet long, four inches [6] square marked 3-2140 in mound of stone.

Thence, third course, south eighty-six degrees and sixteen minutes west six hundred feet to corner No. 4 a cedar post four feet long, four inches square marked 4-2140 in mound of stone.

Thence fourth course, north five degrees and thirty-five minutes west, one thousand one hundred and forty feet to corner No. 1, the place of beginning. Said lot No. 2140 extending one thousand one hundred and forty feet in length along said Noonday vein or lode and containing fifteen acres and four hundred and ninety-five thousandths of an acre of land more or less.

IV.

On and prior to February 15, 1904, the plaintiff was the owner in fee simple, as a part of its public domain, of two certain tracts of land containing 14.632 and 4.976 acres respectively, situated in Coconino County in the then Territory and now State of Arizona and more particularly described hereinafter, and on said date, the said B. F. Saunders lo-

cated the said tracts of land under the said mining laws of the United States and designated the tract containing 14.632 acres as "Sunset lode claim" and the tract containing 4.976 acres as "Sunset Millsite," and thereafter, to wit, on September 20, 1905, the said B. F. Saunders filed in plaintiff's said local land office at Phoenix his application for a patent for said tracts of land wherein he alleged and represented that the said Sunset lode claim contained gold, silver, copper, lead and other valuable [7] minerals and that he had made mining improvements thereon to the value of \$850. The said B. F. Saunders subsequently filed in plaintiff's said local land office his application to purchase said tracts of land, and also filed an affidavit executed by himself and two witnesses procured by him wherein it was alleged that the "Sunset Millsite" was used and occupied by the said B. F. Saunders for mining purposes, to wit, the storing of ore from the Sunset lode claim for milling purposes, and he paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on December 21, 1905, issued final certificate of entry No. 93, and thereafter, on the 6th day of June, 1906, a patent was issued to the said B. F. Saunders conveying to him the legal title to the two said tracts of land designated by the surveyor-general as Lot No. 2118-A, representing the Sunset lode claim, and Lot No. 2118-B, representing the Sunset Millsite, which two said tracts of land are more particularly described as follows:

Beginning for the description of the lot No.

2118-A, at corner No. 1, a cedar post four inches square, four feet long, marked 1-2118-A, with mound of stone, from which U. S. location monument No. 3 bears north six degrees and fifty-six minutes east three hundred and forty and four-tenths feet distant.

Thence, first course, north eighty-one degrees and twenty minutes east five hundred and thirty feet to corner No. 2, [8] a cedar post four inches square, four feet long, marked 2-2118-A, with mound of stone.

Thence, second course, north eight degrees and twenty-one minutes west one thousand one hundred and seventy-four and nine-tenths feet to corner No. 3, a cedar post four inches square, four feet long, marked 3-2118-A, with mound of stone, from which discovery bears south twelve degrees and fifty-seven minutes west six hundred and sixty-five and nine-tenths feet distant.

Thence, third course, south eighty-one degrees and twenty minutes west five hundred and fifty-five feet to corner No. 4, a cedar post four inches square, four feet long, marked 4-2118-A, with mound of stone.

Thence, fourth course, south nine degrees and thirty-four minutes east one thousand one hundred and seventy-five feet to corner No. 1, the place of beginning, said lot No. 2118-A, extending one thousand one hundred and seventy-five feet in length along said Sunset vein or lode

and containing fourteen acres and six hundred and thirty-two thousandths of an acre.

Beginning for the description of the lot No. 2118-B, the Sunset Millsite claim, at corner No. 1, a cedar post four inches square, four feet long, marked 1-2118-B with mound of stone, from which said U. S. location monument No. 3 bears south forty-six degrees and fifteen minutes east two thousand nine hundred and twenty-six and seven-tenths feet distant and corner No. 4 of said lot No. 2118-A bears south fifty-seven degrees and twenty minutes east two thousand two hundred and thirty feet distant.

Thence, first course, north twenty-four degrees east five hundred and ten feet to corner No. 2, a pine post four inches square, four feet long, marked 2-2118-B with mound of stone.

Thence, second course, north sixty-six degrees west four hundred and twenty-five feet to corner No. 3, a pine post four inches square, four feet long, marked 3-2118-B with mound of stone.

Thence, third course, south twenty-four degrees east five hundred and ten feet to corner No. 4, a pine post four inches square four feet long, marked 2-2118-B with mound of stone.

Thence, fourth course, south sixty-six degrees east four hundred and twenty-five feet to corner No. 1, the place of beginning; said lot No. 2118-B, containing four acres and nine hundred and seventy-six thousandths of an acre, which together with the area embraced in said lot No.

2118-A aggregates nineteen acres and six hundred and eight thousandths of an acre of land, more or less. [9]

V.

The plaintiff avers that the representations so made by the said B. F. Saunders were and are wholly false, fraudulent and untrue and were made by the said B. F. Saunders for the purpose of deceiving the officials of the plaintiff's land department and without any belief on the part of the said B. F. Saunders that the said statements and representations or any of them were true; that in truth and in fact the said lands located and entered as lode claims were not and are not mineral lands and did not and do not bear gold, silver, copper, lead or any other valuable mineral; that at the time of the filing of the said applications to purchase no gold, silver, copper, lead or other valuable mineral had been discovered on said lands or any of them, nor has any been discovered since; that the said lands so located, applied for and entered as lode claims were not so located, applied for and entered by the said B. F. Saunders for mining purposes or because of any minerals therein, and the said Sunset Millsite was not occupied and used by the said B. F. Saunders for mining purposes, for the storage of ore from the said Sunset lode claim or any other claim, but all of said lands, those designated as lode claims as well as the tract designated as a mill site, were so [10] located, applied for and entered for the sole purpose of obtaining the exclusive possession, enjoyment and control of valuable springs of water existing thereon, and the said

B. F. Saunders had not expended the respective sums alleged to have been expended by him, or any sum of money, in making mining improvements on said lands and had made no mining improvements whatever on the same, the only improvements made on said lands or any of them by the said B. F. Saunders or any one in his behalf were made for the purpose of developing the said water supply and not for mineral or mining purposes.

VI.

The plaintiff further shows that on the 2d day of December, 1907, the said B. F. Saunders executed a deed conveying the legal title to the lands described as "Jacob lode claim" and "Emmett lode claim" to the defendant corporation, The Grand Canyon Cattle Company, and on the 5th day of December, 1907, the said B. F. Saunders executed a deed conveying the legal title to the land described as the "Noonday lode claim," the "Sunset lode claim" and the "Sunset Millsite" to the said defendant corporation, The Grand Canyon Cattle Company, which said company at the times of the execution of the said [11] deeds and prior to any contract or agreement to purchase said lands or any part thereof from the said B. F. Saunders was fully notified and informed of the said illegal methods and proceedings by means of which the said G. F. Saunders had acquired plaintiff's patents for said lands; that the plaintiff was misled and deceived by the false, fraudulent and untrue representations and statements so made by the said B. F. Saunders and because of such deception was induced to allow the said entries and

to cause the said patents to be issued thereon in the manner and form hereinbefore alleged, all of which actions, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest injury and oppression of the plaintiff in the premises. Plaintiff further shows unto your Honor that one Ora Haley, a resident of the State of Wyoming, is said to have at some time claimed some right or interest in the said lands, but as to the nature and extent of such claim or whether said Ora Haley is now asserting the same, the plaintiff is not informed, and to the end that he may be required to answer and disclose the nature and extent of such interest as he may claim or disclaim any interest in the premises involved, the said Ora Haley is made a defendant to this bill. [12]

In consideration whereof and forasmuch as the plaintiff is without full and adequate remedy in the premises save in a court of equity, and to the end that the said defendants may make full, true and direct answers to all and singular the matters and things herein set forth as fully as if they had been particularly interrogated, but not under oath, their answers under oath being hereby expressly waived, and to the end that the said patents which issued to the said B. F. Saunders and the said deeds executed by the said B. F. Saunders conveying the title to said lands to the said The Grand Canyon Cattle Company may be declared null and void and to be set aside, revoked and held for naught, and be delivered up and surrendered by the said defendants under the Court's command for cancellation, and that the said described

lands may be adjudged and decreed to be the perfect property of the plaintiff free and clear of all claims of the said defendants, and that the said defendants may be ordered, adjudged and decreed to execute and deliver to the plaintiff a good and sufficient deed conveying the said lands free and clear of all liens, incumbrances, outstanding claims or clouds whatsoever to the plaintiff in fee simple absolute and that the said defendants during the progress of this cause and thereafter finally and perpetually may be enjoined from setting up any claim to the said lands, or any part thereof, and from creating any cloud upon plaintiff's [13] title to the same and that the possession thereof may be restored to the plaintiff and that the plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please your Honor to grant unto the plaintiff writs of subpoena issued by and under the seal of this Honorable Court, directed to the said defendants, the said B. F. Saunders, The Grand Canyon Cattle Company and Ora Haley, thereby commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises

as shall seem meet and agreeable in equity.

GEORGE W. WICKERSHAM,

Attorney General of the United States.

J. E. MORRISON,

United States Attorney for the District of Arizona.

[14]

[Endorsements]: No. 49. In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. B. F. Saunders, The Grand Cattle Company, a Corporation, and Ora Haley, Defendants. Bill. Filed May 25, 1912, at 9:10 A. M. Allan B. Jaynes, Clerk. By Earl S. Curtis, Deputy. [15]

*In the District Court of the United States for the
District of Arizona.*

No. —.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

B. F. SAUNDERS et al.,

Defendants.

**Stipulation Re Signing of Answer of Grand Canyon
Cattle Co.**

It is hereby stipulated by counsel for the plaintiff, The United States of America, and by counsel for the defendant, the Grand Canyon Cattle Company, that the answer of the defendant, the Grand Canyon Cattle Company in the above-entitled cause may be signed by counsel only, and that the answer under

oath and signature by the defendant is hereby waived.

J. E. MORRISON,
United States Attorney for the District of Arizona.
KIBBEY, BENNETT & BENNETT,
Attorneys for Grand Canyon Cattle Company.

[Endorsements]: No. 49. In the District Court of the United States for the District of Arizona. United States of America, Plaintiff, vs. B. F. Saunders et al., Defendants. Stipulation. Kibbey, Bennett & Bennett, of Counsel for Defendant Grand Canyon Cattle Company. Filed Dec. 27, 1912, at 4 P. M. Allan B. Jaynes, Clerk. By Francis D. Crable, Deputy. [16]

*In the District Court of the United States for the
District of Arizona.*

No. 49.

THE UNITED STATES,

Plaintiff,

vs.

B. F. SAUNDERS, THE GRAND CANYON CAT-
TLE COMPANY and ORA HALEY,

Defendants.

**Demurrer of Grand Canyon Cattle Company to Bill
of Complaint.**

THE DEMURRER OF THE GRAND CANYON
CATTLE COMPANY, A CORPORATION,
TO THE BILL OF COMPLAINT OF THE
UNITED STATES, THE PLAINTIFF, IN
THE ABOVE-ENTITLED CAUSE.

This defendant, The Grand Canyon Cattle Company, a corporation, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer sheweth that the said plaintiff has not in and by said bill made or stated such a cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against this defendant.

Wherefore this defendant demands the judgment of this Honorable Court whether it shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

KIBBEY, BENNETT & BENNETT,
Solicitors for Defendant, The Grand Canyon Cattle
Company. [17]

State of California,
County of Los Angeles,—ss.

J. S. Torrance makes solemn oath and says: That he is the vice-president of the Grand Canyon Cattle Company, the above-named corporation, defendant, and that the foregoing demurrer is not interposed for delay.

J. S. TORRANCE.

Sworn to and subscribed before me this 22d day of
July, 1912.

[Notarial Seal]

JUNE OLSON,
Notary Public.

My commission expires October 22, 1912.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

KIBBEY, BENNETT & BENNETT,
Counsel for Defendant.

[Endorsements]: No. 49. In the District Court of the United States for the District of Arizona. The United States, Plaintiff, vs. B. F. Saunders et al., Defendants. Demurrer. Filed July 26, 1912, at 11:30 A. M. Allan B. Jaynes, Clerk. By Earl S. Curtis, Deputy. Kibbey, Bennett & Bennett, Counsel for Defendant Grand Canyon Cattle Co. [18]

In the United States District Court for the District of Arizona.

Minute Entry Appearing Under Date of December 2d, 1912.

No. 49 (Phoenix).

UNITED STATES OF AMERICA,
Plaintiff,
vs.

B. F. SAUNDERS et al.,
Defendants.

Minutes of Court—December 2, 1912—Order Sustaining Demurrer to Complaint, etc.

The demurrer of the defendant Grand Canyon Cattle Company having been heretofore argued and fully submitted to the Court and the Court being now fully advised in the premises, does sustain said demurrer with leave to the plaintiff to amend the complaint herein. [19]

*In the District Court of the United States for the
District of Arizona.*

No. 49—IN EQUITY.

THE UNITED STATES,

Plaintiff,

vs.

B. F. SAUNDERS, THE GRAND CANYON CAT-
TLE COMPANY, and ORA HALEY,

Defendants.

Amended Bill of Complaint.

To the Judge of the District Court of the United
States for the District of Arizona, Ninth Judicial
Circuit:

The United States, by the Attorney General, brings
this bill of complaint against B. F. Saunders, whose
first name is to the plaintiff unknown, a resident of
the State of Utah, the Grand Canyon Cattle Com-
pany, a corporation existing under and by virtue of
the laws of the State of California, and Ora Haley,
a resident of Wyoming, and thereupon complains and
shows unto your Honor:

I.

On and prior to the 24th day of October, 1901, the
plaintiff was the owner in fee simple, as a part of its
public domain, of a certain tract of land containing
[20] 19,421 acres situated in Coconino County in
the then Territory and now State of Arizona, and
more particularly described hereinafter, and on said
date the said defendant B. F. Saunders located said
land under the mining laws of the United States con-

tained in Title XXXII, Chapter 6, of the Revised Statutes as amended, and designated the same as "Jacob lode claim," and thereafter, to wit, on August 8, 1904, the said B. F. Saunders filed in plaintiff's local land office at Phoenix, Arizona, his application for a patent for said tract of land wherein he alleged and represented that the same contained gold and silver, and that he had made mining improvements thereon to the value of \$550. The said B. F. Saunders subsequently filed in plaintiff's said local land office his application to purchase said tracts of land and paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on November 3, 1904, issued to the said B. F. Saunders final certificate No. 626, and thereafter on the 18th day of March, 1907, a patent was issued to the said B. F. Saunders conveying to him the legal title to said land designated by the surveyor general as Lot No. 1923, and particularly described as follows:

Beginning at corner No. 1, a pine post four feet long, four inches square, marked 1-1923, in mound of stone, from which U. S. Location Monument No. 1 bears south forty degrees and forty-seven minutes, west six thousand one hundred and forty-seven and two-tenths feet distant.

Thence, first course, north four degrees and thirty-five minutes west one thousand four hundred and [21] ten feet to corner No. 2, a pine post four feet long, four inches square, marked 2-1923 in mound of stones.

Thence, second course, north eighty-five de-

degrees and twenty-five minutes east six hundred feet to corner No. 3, a pine post four feet long, four inches square, marked 3-1923 in mound of stone, from which discovery monument bears south twenty-five degrees and thirty-eight minutes west five hundred and ninety-six feet distant.

Thence, this course, south four degrees and thirty-five minutes east one thousand four hundred and ten feet to corner No. 4 a pine post four feet long, four inches square marked 4-1923 in mound of stone.

Thence, fourth course, south eighty-five degrees and twenty-five minutes west six hundred feet to corner No. 1, the place of the beginning, said lot No. 1923 extending one thousand four hundred and ten feet in length along said Jacob vein or lode and containing nineteen acres and four hundred and twenty-one thousandths of an acre of land more or less.

II.

On and prior to the 27th day of June, 1905, the plaintiff was the owner in fee simple, as part of its public domain, of certain tract of land containing 17.25 acres situated in Coconino County in the then Territory and now State of Arizona and more particularly described hereinafter, and on said date the said defendant B. F. Saunders located the said land under the said mining laws of the United States and designated the same as "Emmett lode claim," and thereafter, to wit, on the 13th day of December, 1905, the said B. F. Saunders filed in plaintiff's said local land office at Phoenix, Arizona, his application for patent for said tract of land wherein he alleged and repre-

sented that the same contained gold, silver, copper, lead, and other valuable minerals, and that he had made mining improvements thereon to the value of \$500. The said B. F. Saunders subsequently filed [22] in plaintiff's said local land office his application to purchase said tract of land and paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on March 23, 1906, issued to the said B. F. Saunders final certificate of entry No. 153, and thereafter, to wit, on October 20, 1906 a patent was issued to the said B. F. Saunders conveying to him the legal title to the said land designated by the surveyor-general as Lot No. 2141, and particularly described as follows:

Beginning at corner No. 1, a pine post four feet long, four inches square marked 1-2141 with mound of stones, from which U. S. location monument No. 3 bears north seventy-five degrees and thirty-four minutes west three thousand and thirty-seven and nine-tenths feet distant.

Thence, first course, south, twenty-two degrees and forty-one minutes west one thousand two hundred and thirty-six feet to corner No. 2, a pine post four feet long, four inches square marked 2-2141 with mound of stones.

Thence, second course, south sixty-seven degrees and five minutes east six hundred feet to corner No. 3, a pine post four feet long four inches square marked 3-2141 with mound of stones, from which discovery bears north three degrees, five minutes and thirty seconds west

six hundred and eighty-nine and nine-tenths feet distant.

Thence, third course, north twenty-two degrees and forty-one minutes east one thousand two hundred and thirty-six feet to corner No. 4, a pine post four feet long, four inches square marked 4-2141 with mound of stone.

Thence, fourth course, north sixty-seven degrees and five minutes west six hundred feet to corner No. 1, the place of beginning; said Lot No. 2141 extending one thousand two hundred and thirty-six feet in length along said Emmett vein or lode, and containing seventeen acres and twenty-five thousandths of an acre of land, more or less.

III.

On and prior to the 27th day of June, 1905, the plaintiff was the owner in fee simple, as a part [23] of its public domain, of a certain tract of land containing 15.495 acres situated in Coconino County in the then Territory of Arizona and now State of Arizona, and more particularly described hereinafter, and on said date the said defendant B. F. Saunders located the said land under the said mining laws of the United States and designated the same as "Noon-day lode claim" and thereafter, to wit, on March 23, 1906, the said B. F. Saunders filed in plaintiff's said local land office at Phoenix, Arizona, his application for a patent for said tract of land wherein he alleged and represented that the same contained gold, silver, copper, lead and other valuable minerals, and that he had made mining improvements thereon to the

value of \$600. The said B. F. Saunders subsequently filed in plaintiff's said local land office his application to purchase said tract of land and paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on June 21, 1906, issued to the said B. F. Saunders final certificate of entry No. 170, and thereafter, to wit, on the 22d day of June, 1907, patent was issued to the said B. F. Saunders conveying to him the legal title to the said land designated by the surveyor-general as Lot No. 2140, and particularly described as follows:

Beginning at corner No. 1 a pine post four feet long, four inches square marked 1-2140 in mound of stone from which U. S. Location Monument No. 5 bears south one degree and fifty-two minutes east, four hundred and eighty-five and two-tenths feet distant, and discovery bears south fifty-two degrees and fifty-five minutes east three hundred and forty-seven and two-tenths feet distant.

Thence, first course, north eighty-six degrees and sixteen minutes east three hundred feet to witness corner to corner No. 2 a cedar post four feet long, four inches square marked W. C. 2-2140 in mound of stone, six [24] hundred feet to corner No. 2 on ledge and not established.

Thence, second course, south five degrees thirty-five minutes west eight hundred and ninety-six feet to pine post four feet long, four inches square, marked W. C. 2-2140 in mound of stone, one thousand one hundred and forty

feet to corner No. 3 a cedar post four feet long, four inches square marked 3-2140 in mound of stone.

Thence third course, south eighty-six degrees and sixteen minutes west six hundred feet to corner No. 4 a cedar post four feet long, four inches square marked 2-2140 in mound of stone.

Thence fourth course, north five degrees and thirty-five minutes west one thousand one hundred and forty feet to corner No. 1, the place of beginning. Said lot No. 2140 extending one thousand one hundred and forty feet in length along said Noonday vein or lode and containing fifteen acres and four hundred and ninety-five thousandths of an acre of land, more or less.

IV.

On and prior to February 15, 1904, the plaintiff was the owner in fee simple, as a part of its public domain, of two certain tracts of land containing 14.632 and 4.976 acres respectively, situated in Coconino County in the then Territory and now State of Arizona, and more particularly described herein-after, and on said date the said B. F. Saunders located the said tracts of land under the said mining laws of the United States and designated the tract containing 14.632 acres as "Sunset lode claim," and the tract containing 4.976 acres as "Sunset Millsite," and thereafter, to wit, On September 20, 1905, the said B. F. Saunders filed in plaintiff's said local land office at Phoenix his application for a patent for said tracts of land wherein he alleged and represented that the said Sunset lode claim contained gold,

silver, copper, lead and other valuable minerals, and that he had made mining improvements [25] thereon to the value of \$850. The said B. F. Saunders subsequently filed in plaintiff's said local land office his application to purchase said tracts of land, and also filed an affidavit executed by himself and two witnesses procured by him, wherein it was alleged that the "Sunset Millsite" was used and occupied by the said B. F. Saunders for mining purposes, to wit, the storing of ore from the Sunset lode claim for milling purposes, and he paid the fees and purchase price required by law, upon which the register of plaintiff's said local land office on December 21, 1905, issued final certificate of entry No. 93, and thereafter, on the 6th day of June, 1906, a patent was issued to the said B. F. Saunders conveying to him the legal title to the two said tracts of land designated by the surveyor-general as Lot No. 2118-A, representing the Sunset lode claim, and Lot No. 2118-B, representing the Sunset Millsite, which two said tracts of land are more particularly described as follows:

Beginning for the description of the lot No. 2118-A, at corner No. 1, a cedar post four inches square, four feet long, marked 1, 2118-A, with mound of stone, from which U. S. location monument No. 3 bears north six degrees and fifty-six minutes east three hundred and forty and four-tenths feet distant.

Thence, first course, north eighty-one degrees and twenty minutes east five hundred and thirty feet to corner No. 2, a cedar post, four inches

square, four feet long, marked 2-2118 A, with mound of stone.

Thence, second course, north eight degrees and twenty-one minutes west one thousand one hundred and seventy-four and nine-tenths feet to corner No. 3, a cedar post four inches square, four feet long, marked 3-2118-A, with mound of stone, from which discovery bears south twelve degrees and fifty-seven minutes west six hundred and sixty-five and nine-tenths feet distant.

Thence, third course, south eighty-one degrees and twenty minutes west five hundred and fifty-five feet to corner No. 4, a cedar post four inches square, four feet long, marked A-2118-A, with mound of stone. [26]

Thence, fourth course, south nine degrees and thirty-four minutes east one thousand one hundred and seventy-five feet to corner No. 1, the place of beginning, said lot No. 2118-A extending one thousand one hundred and seventy-five feet in length along said Sunset vein or lode and containing fourteen acres and six hundred and thirty-two thousandths of an acre.

Beginning for the description of the lot No. 2118-B, the Sunset Millsite claim, at corner No. 1, a cedar post four inches square, four feet long, marked 1-2118-B with mound of stone, from which said U. S. location monument No. 3 bears south forty-six degrees and fifteen minutes east two thousand nine hundred and twenty-six and seven-tenths feet distant and corner No. 4 of

said lot No. 2118-A bears south fifty-seven degrees and twenty minutes east two thousand two hundred and thirty feet distant.

Thence, first course, north twenty-four degrees east five hundred and ten feet to corner No. 2, a pine post four inches square, four feet long, marked 2-2118-B with mound of stone.

Thence, second course, north sixty-six degrees west four hundred and twenty-five feet to corner No. 3, a pine post four inches square, four feet long, marked 3-2118-B with mound of stone.

Thence, third course, south twenty-four degrees west five hundred and ten feet to corner No. 4, a pine post four inches square four feet long, marked 4-2118-B with mound of stone.

Thence, fourth course, south sixty-six degrees east four hundred and twenty-five feet to corner No. 1, the place of beginning; said lot No. 2118-B, containing four acres and nine hundred and seventy-six thousandths of an acre, which, together with the area embraced in said lot No. 2118-A aggregates nineteen acres and six hundred and eight thousandths of an acre of land, more or less.

V.

The plaintiff avers that the representations so made by the said B. F. Saunders were and are wholly false, fraudulent and untrue, and were made by the said B. F. Saunders for the purpose of deceiving the officials of the plaintiff's land department without and belief on the part of the said B. F. Saunders that the said statements and representations, or any

of them, were true; that in truth and in fact the said lands located and entered as lode claims were not and are not mineral lands, and did not and do not bear gold, silver, copper, lead, or [27] any other valuable mineral; that at the time of the filing of the said applications to purchase, no gold, silver, copper, lead or other valuable mineral had been discovered on said lands, or any of them, nor has any been discovered since; that the said lands so located, applied for and entered as lode claims were not so located, applied for and entered by the said B. F. Saunders for mining purposes or because of any minerals therein, and the said Sunset Millsite was not occupied and used by the said B. F. Saunders for mining purposes, for the storage of ore from the said Sunset lode claim, or any other claim, but all of said lands, those designated as lode claims, as well as the tract designated as a mill site, were so located, applied for and entered for the sole purpose of obtaining the exclusive possession, enjoyment and control of valuable springs of water existing thereon, and the said B. F. Saunders has not expended the respective sums alleged to have been expended by him, or any sum of money, in making mining improvements on said lands, and had made no mining improvements whatever on the same, the only improvements made on said lands or any of them by the said B. F. Saunders, or any one in his behalf, were made for the purpose of developing the said water supply and not for mineral or mining purposes.

VI.

The plaintiff further shows that on the 2d [28] day of December, 1907, the said B. F. Saunders executed a deed conveying the legal title to the lands described as "Jacob lode claim" and "Emmett lode claim" to the defendant corporation, The Grand Canyon Cattle Company, and on the 5th day of December, 1907 the said B. F. Saunders executed a deed conveying the legal title to the land described as the "Noonday lode claim," the "Sunset lode claim" and the "Sunset Millsite" to the said defendant corporation, The Grand Canyon Cattle Company, which said company, at the time of the execution of the said deeds, and prior to any contract or agreement to purchase said lands, or any part thereof, from the said B. F. Saunders, was fully notified and informed of the said illegal methods and proceedings, and at all times herein mentioned well knew said methods and proceedings to be false, fraudulent and untrue, and well knew said methods and proceedings were the means by and through which the said B. F. Saunders acquired plaintiff's patents for said lands; that the plaintiff was misled and deceived by the false, fraudulent and untrue representations and statements so made by the said B. F. Saunders, and because of such deception was induced to allow the said entries and to cause the said patents to be issued thereon in the manner and form hereinbefore alleged, all of which actions, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest injury and oppression of the plaintiff in

the premises. Plaintiff further shows unto your Honor that one Ora Haley, a resident of the State of Wyoming is said to have at some time claimed some right or interest in the said lands, but as to the nature and extent [29] of such claim or whether said Ora Haley is now asserting the same, the plaintiff is not informed, and to the end that he may be required to answer and disclose the nature and extent of such interest as he may claim or disclaim any interest in the premises involved, the said Ora Haley is made a defendant to this bill.

In consideration whereof, and forasmuch as the plaintiff is without full and adequate remedy in the premises save in a court of equity, and to the end that the said defendants may make full, true and direct answers to all and singular the matters and things herein set forth as fully as if they had been particularly interrogated, but not under oath, their answers under oath being hereby expressly waived, and to the end that the said patents which issued to the said B. F. Saunders and the said deeds executed by the said B. F. Saunders conveying the title to said lands to the said The Grand Canyon Cattle Company may be declared null and void and be set aside, revoked and held for naught, and be delivered up and surrendered by the said defendants under the court's command for cancellation, and that the said described lands may be adjudged and decreed to be the perfect property of the plaintiff free and clear of all claims of the said defendants, and that the said defendants may be ordered, adjudged and decreed to execute and deliver to the plaintiff a

good and sufficient deed conveying the said lands free and clear of all liens, incumbrances, outstanding claims or clouds whatsoever to the plaintiff in fee simple absolute and that [30] the said defendants during the progress of this cause and thereafter finally and perpetually may be enjoined from setting up any claim to the said lands, or any part thereof, and from creating any cloud upon plaintiff's title to the same, and that the possession thereof may be restored to the plaintiff, and that the plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please your Honor to grant unto the plaintiff writs of subpoena issued by and under the seal of this Honorable Court, directed to the said defendants, the said B. F. Saunders, The Grand Canyon Cattle Company and Ora Haley, thereby commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable in equity.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

J. E. MORRISON,
United States Attorney for the District of Arizona.

[Endorsements]: No. 49. In the United States District Court for the District of Arizona. The United States, Plaintiff, v. B. F. Saunders, The Grand Canyon Cattle Company, a Corporation, and Ora Haley, Defendants. Amended Bill. George W. Wickersham, Atty. Gen'l of the United States. J. E. Morrison, U. S. Atty. for District of Arizona. Filed Dec. 12, 1912, at 1 P. M., Allan B. Jaynes, Clerk. By Frank E. McCreary, Deputy. [32]

*In the District Court of the United States, for the
District of Arizona.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

B. F. SAUNDERS, GRAND CANYON CATTLE
COMPANY, a Corporation, and ORA
HALEY,

Defendants.

Statement of the Evidence. [33]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—No. 49.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

B. F. SAUNDERS, GRAND CANYON CATTLE
COMPANY, a Corporation, and ORA
HALEY,

Defendants.

Evidence.

This cause coming on for hearing before the above court, at Phoenix, Arizona, on January 11th, 1915, before Hon. William H. Sawtelle, District Judge; James M. Sheridan, Special Assistant Attorney General; Thomas A. Flynn, United States Attorney, and Samuel L. Pattee, Assistant United States Attorney, appearing for plaintiff, and Messrs. Kibby, Bennett & Bennett, Henry J. Stevens, and Walter K. Tuller, appearing for the defendants.

AND THEREUPON the following evidence, both oral and documentary, was offered by the respective parties: [36]

The Government offered in evidence a certified copy of the map of the Kaibab National Forest, which has a diagram accompanying the President's proclamation, of date May 19th, 1913, admitted in evidence, and marked "Government's Exhibit 1."

Deposition of Charles Dimmick, for the Government.

The Government then offered the deposition of Charles Dimmick, which was read by Mr. Sheridan, and in which the witness testified as follows:

"My name is Charles Dimmick, and I am forty-one years old; I reside at present at Barclay, Nevada; my occupation is stock-raising and rancher. I have been in the employ of the defendants, B. F. Saunders and Ora Haley; I first entered their service the 15th of April, 1894, I believe, in ranching and cattle-raising, at Green Springs, Arizona, or Pahrashaunt, Arizona. That is in the northwestern part of Arizona on the north side of the Grand

(Deposition of Charles Dimmick.)

Canyon. I was at that time in the employ of Mr. Saunders. I don't think that Saunders and Haley were engaged in business in a partnership relation at that time. It is my belief that it was just Mr. Saunders, I don't know positively whether Haley was in partnership at that time, I think not. As nearly as I can remember Mr. Haley went in with Mr. Saunders in 1897, possibly in 1896, but I think in 1897, and Mr. Haley at that time joined Mr. Saunders in the cattle business also. At the time I first entered the service of Mr. Saunders in April, 1894, Mr. Saunders had a ranch that was known by the name of Pahrashaunt, or Green Springs ranch; he had another ranch in that vicinity at that time known as the Canaan ranch, that was a year later, 1895. At the time I first went to work for Mr. Saunders at the Pahrashaunt or Green Springs ranch they had about three thousand head of cattle, some few ranch horses, possibly a hundred head of saddle horses. I couldn't say how many watering places—five or six watering places. I recall the names of some of the watering places. There was Green Springs, Oak Grove, Mokiak, Piney. I can't recall the name of the other now. There was a lake called Lake Flat. Mr. Saunders had about three thousand head [37] of cattle. I don't think he owned any land in connection with these ranches at that time, he had just settled on that ranch and ran his cattle as was the general custom in those places.

I cannot describe the other ranch, the Canaan ranch, as it was at that time because I was not on it.

(Deposition of Charles Dimmick.)

It was about one hundred twenty-five miles from the Green Springs ranch in a northwesterly direction or north of east; it was not directly northeast. When I first became acquainted with that ranch I knew practically nothing of it. I commenced work with Mr. Saunders in 1894, and remained in his employ until the Grand Canyon Cattle Company purchased from him. During the time I was employed by Mr. Saunders his stock increased, and his ranch holdings and water holdings and ranch accommodations increased by buying and getting more stock, more watering places and ranch privileges and improving these places. At that time they sold to the Grand Canyon Cattle Company they had considerably larger holdings of cattle and larger ranch facilities. At the time of the sale to the Grand Canyon Cattle Company Saunders and Haley had about ten thousand head of stock. That was in October, 1907.

At the time I went to work for Mr. Saunders there was practically not water facilities for any larger number of cattle than they had at that time on that ranch. In order to improve the situation to meet the larger number of cattle that was subsequently acquired, more ranches and watering places were purchased, and these places developed in different places than the Pahrashaunt country. I have named the watering places as near as I can recall them that were in the ranch of Saunders at the time I went to work for him. There were other ranches or ranges known by different names than those

(Deposition of Charles Dimmick.)

already given by me, subsequently acquired by Saunders and Haley. There was the Canaan ranch, the Buckskin Mountain ranch, the Kane Beds ranch, the Pipe Springs ranch, The Green Springs or Pahrashaunt ranch was not within the boundaries of the Kaibab National Forest when it was established. It was to the south of west of the Kaibab National Forest, practically west. [38]

Among the ranches I have named the Buckskin Mountain ranch and the Kane Beds ranch were found within the boundaries of the Kaibab National Forest, or near the Kaibab National Forest. The Kane Beds ranch was thirty-five miles west and a little north of west of that forest. When Saunders and Haley sold out to the Grand Canyon Cattle Company they sold these ranches outside of the Kaibab Forest that I have named. The one outside the Kaibab was the Kane Beds. Part of the Buckskin Mountain ranch, practically half of it, is off the Kaibab National Forest, but it is all considered and comes under the head of the Buckskin or V. T. ranch, but it is not all on the forest. What was sold by Saunders and Haley to the Grand Canyon Cattle Company was the Buckskin Mountain ranch or the V. T. ranch, they being the same, and the Kane Beds. The Buckskin Mountain ranch or V. T. ranch was partly within and partly without the Kaibab Reserve, and the Kane Beds ranch was entirely outside the Kaibab Reserve.

After I went into the employ of Mr. Saunders in 1894, and down to the time of the sale to the Grand

(Deposition of Charles Dimmick.)

Canyon Cattle Company, Saunders and Haley developed water on the Buckskin Mountain or V. T. ranch by digging out springs and piping the water, reservoiring, tanking—practically the best way for holding and saving living waters, and also in accumulating flood waters. I can't say who outlined or planned the matter in which this water should be developed; practically every man in their employment; also including Mr. Saunders. When I went to work for Mr. Saunders I was in charge of the pump station; that was not on the Buckskin Mountain ranch, but on the Green Springs and Pahrashaunt ranch. I came down to go to work on the Buckskin Mountain ranch in the fall of 1897 or 1898—1897, I believe. I went to work for them on the Bucksin Mountain ranch in the handling of stock. I was not installed at that time as manager or supervisor or in any particular capacity—simply as [39] one of the men employed on the ranch trailing cattle at that time. Subsequently to the time I went to work on the Buckskin ranch and before the time of the sale to the Grand Canyon Cattle Company I received an appointment as local representative or agent for Mr. Saunders and Mr. Haley on that ranch. That was about six years before the purchase by the Grand Canyon Cattle Company; in the spring of 1901, I believe. I was then appointed general foreman on the Buckskin or V. T. ranch.

(It is agreed between the counsel that when the Buckskin Mountain ranch is referred to it means also the ranch as described as the V. T. ranch.)

(Deposition of Charles Dimmick.)

Prior to 1901 I was only on the Buckskin Mountain ranch at times and only about a year altogether that whole period. The rest of that time from 1897 to 1901 I was engaged in southern Idaho, Wyoming and eastern Nevada. When I was at these other places I worked for Saunders and Haley also, but not on the other ranches owned by Saunders and Haley. I was trailing stock, general handling of stock on forest reserves and the public domain summer grazing and shipping. I didn't have anything personal to do with the development of water between 1897, when I first went to work on the Buckskin Mountain Ranch, and 1901, when I was appointed ranch foreman. After I was appointed ranch foreman in 1901, between that time and the time the sale was made between Saunders and Haley to the Grand Canyon Cattle Company I did have to do with the development of water on the Buckskin Mountain Ranch. After I was appointed ranch foreman I received my instructions as to the manner in which the water should be developed from B. F. Saunders. I received these instructions both in writing and orally. I do not have in my possession any written instructions I received at that time from Mr. Saunders, or Saunders and Haley in this regard. They were burned up. At the present I have no record relating to my former employment with Saunders and Haley. As nearly as I can recall the substance of those instructions as to what to do about the water was fixing and developing it in the best way it could be done, practically leaving it to my judgment

(Deposition of Charles Dimmick.)

as to how to do it. The details of [40] the manner of developing the water on the ground where it was not already developed or caring for it where it already existed in pools and springs was left to my judgment, and I attended to it. I had people assisting me in carrying on this development work, but I can't give the names of them. They were practically not persons who were employed on the ranch with me at that time. They were people employed by me especially to develop the water. Mostly people whom I found in that vicinity. There were three or four persons who were not in that vicinity that were employed to assist me in that work. I have forgotten their names; they were from Salt Lake. I do not recall whether I had an engineer or surveyor as assistant in developing these water supplies. John T. Breckon was sent down by Mr. Saunders to do some surveying, I do not recall in what year Mr. Breckon came down there. There was also an engineer by the name of Horn sent there by Mr. Saunders to do some surveying. I can't say what surveying Mr. Breckon and Mr. Horn did on the Buckskin Mountain ranch, I was not with them but a very little time.

At the time when I first went to work on the Buckskin Mountain ranch, 1897, Saunders and Haley had on that ranch I think about four thousand head of cattle, and there were about ten thousand head when they sold it. And this water development that I speak of and which began in 1901, was necessary to meet the demands of this larger body of cattle. I believe there was some sort of filings made on some

(Deposition of Charles Dimmick.)

of the lands on which these waters were found on the Buckskin Mountain ranch or the range used in connection with that ranch. There was one on Soap Creek; I believe that was scrip. And pools. I don't mean what is known as the Jacobs Pools, but just "The Pools." The form of location on the Pools was scrip; on the House Rock, scrip; Two-mile, scrip; Kane Springs, scrip; One-mile,—I am not positive about it, I think it was not scrip. There were others, the South Canyon, by permission of the Forest service.

Q. I now hand you, Mr. Dimmick, a part of the diagram forming part of the Proclamation dated August 23d, 1910, establishing the Kaibab National Forest in the State of Arizona, [41] with certain mapping and all the references superimposed for the purpose merely of identification and which you may refer to if you desire to do so in answering this question. If there are any others than these you have named, and the form of location, state them.

A. There is Cliff Springs and Greenland Springs that was by permission of the Forest Service, and there was the Bright Angel Spring.

WITNESS.—(Continuing:) As far as I have gone to the present time that is my best recollection without reference to maps or anything else; it is my own independent recollection. Now I am going to refer to the map. There was Little Park lake, by Forest Reserve permission; the Big Park lake, and the Kenabunicks lake. I do not find that on the map. That was held by Forest Reserve permission. All

(Deposition of Charles Dimmick.)

these that I have named were within the Buckskin Mountain ranch or range; there was also the Dry Park lake, Forest Reserve permission; Lookout lake Forest Reserve permission; East Lake, Forest Reserve permission; Joe's Mud Holes, Forest Reserve permission; Mile-and-a-half, Forest Reserve permission; Fracas lake, Forest Reserve permission; Frank's lake, Forest Reserve permission; Basin Springs, Forest Reserve permission; Basin lake Forest Reserve permission; Snipe lake, Forest Reserve permission; Three lakes, scrip, I believe; Jacob's lake, a lake located on a mining claim.

Jacob's lake was made before the mining claim was located, I do not remember when. The lake was excavated just before I went there, but I do not know just when, it was before I took charge of the Buckskin Mountain ranch in 1901; it was about 1900 I presume. The mining claim was either located on it or it on the mining claim. My best recollection is that at least as early as 1900 Jacob's lake was excavated. I do not know when the mining claim was placed on it. [42]

(Witness proceeds answering questions relative to location.) There was Greenland lake, Forest Reserve permission. That is all I can recall on the Buckskin or V. T. On the Kane Beds ranch there was the Kane Beds springs. I do not remember the way it was held or nothing about it; there was a spring developed and a pipe-line about three miles to a tank and trough and a reservoir for stock watering purposes. Canaan reservoir I think all scrip.

(Deposition of Charles Dimmick.)

That is all the watering places on the Kane Beds ranch.

The form of location is supposed to be those here given and not by personal knowledge. I acquired this general knowledge as to the way in which they were held from the Forest officers; they informing me that these permissions had been given. That is, where I refer to the Forest Reserve permission. And in other cases where it is scrip in talking or writing to B. F. Saunders who claimed to have these locations.

The Jacob's lake mineral location was from information obtained from Mr. Saunders. Mr. Saunders is now dead. I obtained this information from Mr. Saunders when I was in his employ as ranch foreman. When I speak of these watering places being held by the Forest Reserve permission, I mean by permit for excavating or necessary work that was done on it. I recall other mineral locations than this mineral claim on Jacob's lake within the Buckskin Mountain range or ranch. There are mineral locations all over it. There were other locations made by Mr. Saunders while I was in his employ. I recall the Alaska—there was water on that in the form of a lake. [43]

Counsel for the defendant objected to the introduction of any evidence with respect to any claims other than the four claims involved in this suit.

The COURT.—I overrule the objection and admit the evidence bearing on the intent with respect to the charge that these patents for the four claims in question were fraudulently obtained. We have not yet

(Deposition of Charles Dimmick.)

reached the point where it is claimed that the Grand Canyon Cattle Company had knowledge of that fraud, but it is admissible as tending to show intent with which Saunders was acting.

To which ruling of the Court counsel for the defendants excepted.

It was thereupon agreed that the testimony relating to claims other than those involved in this question should be deemed to have been objected to, and subject to the same objection and exception, and the additional objection that there is no showing of such a close connection in point of time as to bring the case within the ruling which permits other fraudulent acts to be shown.

WITNESS.—(Continuing:.) “This is the Alaska lode mineral location that I refer to now, the water was in the form of a lake in parts of the year. Part of the year it dries up and part of the year the water is there. The lake is within the boundary of the mineral claim. I recall other mineral claims made by Mr. Saunders than the Jacobs lode and the Alaska lode. There is the Noonday, the Sunset, and the Emmett. The Noonday, Sunset and Emmett mineral claims all had water within the boundaries. I only know of one Noonday lode. I don’t know whether or not it is patented. It is located right east of One-mile Spring. The Noonday lode to which the witness has testified is the unpatented Noonday lode.

The water on the Noonday lode patented had to be developed by tunneling the spring. I had the water

(Deposition of Charles Dimmick.)

developed on that lode by tunneling; it was done under my direction. I am not positive who the men were that did the work on the Noonday lode for me, I think Ernest Duffin. [44] There was not a natural pool on the Sunset lode. That had to be developed also by tunneling. That work was done under my direction and supervision by C. D. Crosbie. There was a mill site in connection with the Sunset claim. There was water on it in the form of a spring; it had to be developed and was developed under my direction the same as the others. C. D. Crosbie did the work. The nature of the development was tunneling. There was water on the Emmett lode in the form of a spring; it had to be developed and it was done under my supervision by C. D. Crosbie. The water from these mineral claims was piped away from them. From the Noonday it was piped into the House Rock pipe-line; from the Sunset mill site it was piped into the Pools line; the Sunset and Emmett were piped together into a reservoir to themselves; that reservoir was about a mile and a half from the mining claims and was used for watering stock. The development work done on the Emmett lode was done by tunneling.

Q. Now, all of this development work, Mr. Dimmick, that you have referred to on the Jacob lode, the Sunset lode and mill site, the Noonday lode and the Emmett lode, was done for the purpose of developing water at these points, was it not?

Mr. STEVENS.—I object to that on the grounds it is incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.

(Deposition of Charles Dimmick.)

Objection overruled, and defendants, Grand Canyon Cattle Company, excepted.

A. That was one purpose, and also for assessment work. I now refer to the Noonday lode, the Sunset lode and Sunset millsite and the Emmett lode. The Jacobs lode had excavation work in the development of water; also had work done for prospecting or development of mineral.

WITNESS—(Continuing:) With reference to the prospecting or development work in prospecting for mineral on the Jacobs lode, some of it was done by me or under my directions, and some of it was not. The part that was not done by me I do not know by whom it was done. It was done before I came there.
[45]

Describing the development work on the Jacobs lode done by me there was one shaft I think about twenty feet deep; that shaft was located on the northwest side of the pool or lake about fifty or one hundred feet from the water. I don't recall whether we got any water in this shaft. The other mineral development I did on this lode was one cut north of the lake; I cannot say the length, probably twenty feet long and three and a half or four feet wide, and in depth from nothing running in five feet. In other words, it drifted into the hills. I cannot say how far away from this cut the shaft was, possibly two hundred feet. It was within the boundaries of the claim. This constitutes all of the mineral development I did on the Jacobs lode.

Describing the mineral development on the Jacobs

(Deposition of Charles Dimmick.)

lode other than what I had done, there was one shaft on the south side, I don't know how deep. When I say on the south side I mean on the south side of the lake possibly twenty-five feet from the lake. There was no water in it. There was no development work on this claim that I know of.

I am not an engineer or a geologist, just a cow puncher. I can't say of my own knowledge whether or not this land included in the Jacobs lode, so-called, or Jacob's lake, contained mineral. I would think it did from the looks of the rock. I saw there practically the same kind of rock as the Petosky and Coconino companies were working. The nearest claims the Petosky and Coconino companies were working would be a half a mile from the Jacobs lode. They claimed they were working copper. They did some work on their claims after I went over to the Buckskin Mountain ranch in 1897, and some before that.

I never knew of any mineral being shipped from the Jacobs lode. There was mineral shipped from the Petosky or Coconino mines to the Coconino mills, shipped from one of their claims and milled there. There was a mill and smelter there. The smelter was erected before I went there, or about that time, and the mill, I believe, in 1902. When I left there they were not continuing business. I think they took the last ore out. I think the mill ran six months and the smelter two different times three or four months at a time, and then they closed down, and up to the time I left there they remained closed down. [46]

(Deposition of Charles Dimmick.)

The pipe for the purpose of piping this water from the different places I have testified to was brought from Marysville, Utah, by Mr. Saunders, and I had it placed and connected it up with the water; that was done under my direction by people working under me. That is not true with reference to the other places where piping was done than the mineral claims I have testified to.

Q. Now, other than the Jacobs lode, the Noonday lode, the Sunset lode and mill site and the Emmett lode, from what other waters were pipe-lines put in under your direction?

Mr. STEVENS.—Objected to as immaterial, incompetent and irrelevant; and also the objection with respect to other claims which runs all through this testimony.

Objection overruled, and defendants, Grand Canyon Cattle Company, excepted.

A. House Rock and Two-mile.

WITNESS.—(Continuing:) When I went there in 1897 I found some pipe-lines already installed by Mr. Saunders. The names of the springs or pools which had already been piped when I arrived there were the South Canyon, Kane Springs, Kane Beds pipe-line and the Pools. In the course of my work from the time of my employment in 1897 on the Buckskin Mountain ranch down to the time the sale was made by Saunders and Haley to the Grand Canyon Cattle Company I had occasion to travel over this Buckskin Mountain ranch and range used by Saunders and Haley all the time. I was practically

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familiar with the area of the ranch and the quality of the range. It was a fairly good range. With reference to the range in that part of the country it was classed as comparing favorably with it. Saunders and Haley shipped cattle yearly from that place, and they were in fairly good condition when they shipped them, but not good enough for the beef market. The usual custom is they take them off the range and feed and fatten them up before they put them on the market. That is the general custom. I have no idea how many townships were covered by the range incident to this Buckskin Mountain ranch covered by the cattle [47] owned by Saunders and Haley, it was about forty-five miles on the west and forty on the north and sixty on the east and south—triangular shape. And the water supply for the cattle on that ranch was at the points they were testified to me on the mineral claims, and forest permits and the scrip location. Saunders and Haley were also in the sheep business, and ranged their sheep practically all over the United States—that is, in the range country.

The sheep and cattle business was their occupation as far as the partnership was concerned. Haley himself, I think, had other business, but I had nothing to do with that. With reference to the names of places that have been mentioned, what is known as the Jacobs lode has also been referred to as the Jacobs lake ranch. The Noonday lode is east of the One-mile ranch, but near it, about half a mile. The Sunset lode is about a mile and a half east of the

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Pools. What are known as the North Lake tract and Middle Lake tract and South Lake tract are on what I presume would be lieu selections on what is known as Three Lakes ranch.

The Alaska mill-site location, is, I think, on the Mile-and-a-half ranch, and the Alaska lode location, I think is on Mile-and-a-half. I don't know how far the Alaska mill site is from the Alaska lode, but I am not quite sure that the Alaska lode is on the Mile-and-a-half ranch. I cannot say that there was a mineral location on East lake—I don't know. I do not recall the location known as the Snipe lode, but there was a lake known as the Snipe lake. I recall a lake known as the Franks lake, but do not recall that having a lode location known as Frank's lode. I recall Crane lake, and I recall a location on that. I wouldn't say whether it was the Crane lode, but there was some location on it. I recall that there was a scrip location on Kane ranch, placed by Mr. Saunders. I don't know any of the particulars of that scrip or location.

On the range that I have described by dimensions contained in what is known as the Buckskin Mountain ranch there might possibly be other waters than those I have testified to, but as to that I cannot recall to mind at this time. As a matter of fact water was very scarce in that part of the world at that time. I found it necessary there as ranch foreman to have the development made, and which I have testified to, in order [48] to have sufficient water for the stock. That is the reason I made them. I

(Deposition of Charles Dimmick.)

cannot recollect whether Mr. Saunders either in conversation or in correspondence, stated to me what his purpose was in having this water developed. I recall that I accompanied Mr. John T. Breckon when he was making surveys there at Mr. Saunders' direction one instance I believe was all. The survey that I accompanied him on was the Forest Reserve line. I don't recall any others. I might have gone on some other surveys with him without recalling them now. I understand when I say surveys that I meant the surveys of mining claims or other locations for Mr. Saunders done by Mr. Breckon. I cannot say whether or not the development of water on mineral claims on the Buckskin Mountain ranch by me or people under my direction at Mr. Saunders' suggestion was before the mineral claims were placed there. I do not recall how soon after my arrival on the Buckskin Mountain ranch I first saw the Sunset lode and Sunset mill site. I know of no ore being mined or shipped from the Jacobs lode or the Noon-day lode or the Sunset lode. I do not know of any ore having been stored on the Sunset mill site. I don't know of any ore being mined or shipped from the Emmett lode.

With reference to any mineral claims upon which tunneling was done for the purpose of developing water under my direction and in accordance with instruction from Mr. Saunders, the tunneling for water and assessment work was done at the same time. The cost of the work was estimated in different ways. Sometimes work was done by the

(Deposition of Charles Dimmick.)

day's work, sometimes by contract. I cannot say how much a day was paid laborers for day's work.

I had some correspondence with Mr. Saunders concerning development done for water or for mineral on those claims in a general way. I made reports in full of amount of work done, etc., to Mr. Saunders. These reports were in writing and were made at regular times. It was in accordance with instructions *with* Mr. Saunders that I should report at certain times of the handling of water matters and conditions generally on the ranch, and the instructions I had from Mr. Saunders included [49] instructions to make reports *from* him at certain times for work done in the development of water and with reference to other matters on the ranch. I made that report in the form of a letter and sent it to Mr. Saunders at Salt Lake once a year.

Q. And in these reports you entered into the general situation of handling the entire place?

Mr. STEVENS.—I will object to this question on the ground that these reports are made in writing and the reports are the best evidence.

The COURT.—I sustain the objection for the present, and if the evidence later shows that a diligent search has ever been made to locate these reports the evidence will be admitted.

Q. Did you in any of these yearly reports inform him of the assessment work on the mineral claims having been done under your direction?

Mr. STEVENS.—I make the same objection to that question.

(Deposition of Charles Dimmick.)

The COURT.—I sustain the objection and you may call it to my attention again whenever you have introduced evidence showing diligent search.

WITNESS.—(Continuing:) I am quite distinct, however, in the yearly reports I did report fully on the water developments. Some of the water development work on some of these mineral claims was done under contract. I recall that some of the parties who took these contracts were Ernest Duffin and C. D. Crosbie. Then there was two or three parties from Salt Lake that I don't remember their names. The Salt Lake parties were sent down by Mr. Saunders. Duffin and Crosbie didn't come from Salt Lake. They were not working at the ranch. Duffin lives at Canonville, Utah, and C. D. Crosbie is dead. At the time he was doing this work he lived at Fredonia, Arizona. I think this contract was in writing, and I signed it myself, if it was a written contract. That was at the direction of Mr. Saunders. I have none of these contracts in my possession. They would be sent to Mr. Saunders at the time of completion of the contract at the end of the year, and no copies were kept by me. I have no copies of the yearly reports [50] to Mr. Saunders. I just made out one report and sent it to Mr. Saunders, and don't know of my own knowledge where these reports are at the present time. I cannot recall the terms of any of these contracts with Crosbie and Duffin.

Where men were sent down by Mr. Saunders from Salt Lake to the ranch he fixed the compen-

(Deposition of Charles Dimmick.)

sation. When the work was done under contract and when Mr. Saunders sent men down to the ranch but not under contract, sometimes he fixed the compensation and sometimes I fixed it. There was no particular class of work not under contract where he allowed me to fix the compensation and another particular class where he fixed the compensation. It just happened to occur that way. I cannot recall what the contract price was for this water development work or what any water development work done under my direction cost. I cannot say what the tunneling on the various claims for water cost per foot.

Q. Do you know what was usually paid for tunneling per running foot in that part of the country?

Mr. STEVENS.—I object to that on the ground it is incompetent, irrelevant and immaterial, and that it is too general and that it does not relate to any particular claim in controversy.

Objection overruled, and defendant, Grand Canyon Cattle Company, excepted.

A. I would think about \$4.50 per running foot.

WITNESS.—(Continuing:.) I am not sure about that price, it is a matter of conjecture with me, and I have no distinct recollection of the amount I did pay for that work. I presume the tunneling of these claims done under my direction was done for both water development and for mineral exploration, but I cannot segregate it at this time, and say which was for one and which for the other. My understanding is that the work in each instance, the

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tunneling, was for the purpose of developing water and mineral with the exception of the Jacobs lode; as to that there was one shaft and cut made for the development of mineral. The other work I do not know. It was done before I went there. I think I executed an affidavit of assessment work on the Jacobs lake claim. I cannot say what became of that affidavit. I cannot recall whether I made any affidavit for assessment work [51] on any other claims for Mr. Saunders, and I think I made only one of these affidavits with reference to the Jacobs lode. Not all of the assessment work that was done on the Jacobs lode under my direction was done at one time. At one time I think the shaft was sunk to a depth of twenty feet, and at one time a cut; that is the shaft and the cut to which I have already testified, but I cannot testify as to the length of time that intervened between the making of the shaft and the cut. I think they were not both made within the same year. The particular thing that fixes the fact in my mind that they were made at different times, is that a person would not do assessment work twice in the same year on a claim. I have a distinct recollection of seeing copper-stained rock on the Jacobs lode after I went to work on the Buckskin Mountain ranch, but I cannot say when the first time was. It was in the form of a rock apart from the rock in the mountain. It would be scattered around. I never examined the shaft and open cut on the Jacobs lode to see if there was any copper-stained rock in place, and cannot state of

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my own knowledge whether or not the copper-stained rock I saw there came out of the shaft or open cut.

I knew a person down there at the Buckskin Mountain ranch by the name of John Brown; he was in the saw-mill business at Jacobs lake, and was there all the years I was, carrying on this saw-mill business. At one time I employed Brown to assist around the ranch as a carpenter in connection with the water development on the Jacobs lode, building corrals. Brown didn't assist me in doing any excavation work on the Jacobs lode, if he did any work of that kind it was before my time. I had knowledge of Mr. Brown having done excavation work on that lake for Saunders and Haley before my time from the fact that Mr. Brown said so, and from the fact of the work being done.

All the water development work that was done from time to time after I went down there to the Buckskin Mountain ranch to the time of the sale by Saunders and Haley to the Grand Canyon Cattle Company improved the condition of the Buckskin Mountain ranch a great deal. It didn't make it a better range, but it made a better water service and the carrying capacity of the range perhaps three times what it was before.

The Kane Beds ranch practically gives access to a range thirty miles square. The number of cattle we ranged on the Kane Beds ranch varied from one to six thousand head. That one to six thousand head was part of the ten thousand head that was finally sold by Saunders and Haley [52] to the

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Grand Canyon Cattle Company. I had a person by the name of David Rider working on the Buckskin Mountain ranch working under me, but I cannot recall whether I had him assist Mr. Breckon in the surveying of the Jacobs lode. I don't recall who located the Jacobs lode, I didn't locate it myself. The only development of the Sunset lode for mineral purposes was the tunneling.

There were no other improvements of any kind than those I have already testified to on the Sunset lode. I cannot recall whether I assisted Mr. Breckon in the survey of the Sunset lode. The fact that my name appears as a chain-man on the survey of that lode does not refresh my memory.

I know a person by the name of Young—H. B. Young. He worked on the Buckskin Mountain ranch under me, and I observe his name as one of *axmen* on that survey, but that does not refresh my memory of his having served in that capacity; nor does his name on the affidavit of five hundred dollars improvement on the Sunset lode and mill site refresh my memory as to the cost of the work done there or whether or not I assisted in this survey.

On the Sunset mill site nothing was done for the purpose of equipping it as a mill site more than the development of water. I never saw any ore stored there. I didn't locate the Sunset lode or the mill site. I couldn't say whether I assisted in locating it or not, but I do not recall the time they were located. The tunneling was done on the mill site under my direction and was for the development of

(Deposition of Charles Dimmick.)

water. It was piped away from there and that was done under my direction, and the tunneling on the Sunset lode and piping was done under my direction, and all that developing and piping was done for the purpose of watering stock.

I recall posting notices on the Sunset lode and mill site, and referring to the document entitled "Proof of posting notice and diagram of claim," also on the Jacobs claim, I do not recall whether there was anybody else than myself and Mr. Voice there at that time. When we posted notices on the Jacobs lode Alex Swapp was with us. These notices were [53] posted at the direction of Mr. Saunders. George Voice, whose name appears on the proof of posting notices and diagram of claim, was a man who was working for me on the ranch, and Alex Swapp was at that time working for me on the ranch. I have no recollection of executing a nonmineral affidavit for the Sunset mill site, and the Government's Exhibit 2, entitled "Nonmineral affidavit" does not refresh my recollection.

I observe also the signature of C. D. Crosbie on that same nonmineral affidavit. I recognize there the signature as mine, or a very good copy of it, but I have no distinct recollection of making it. The Sunset mill site is, I should judge, between three-quarters of a mile from the Sunset lode. I have been on the lode and mill site frequently. The character of the ground so far as I observed was the same on the lode and mill site. All work of every kind that I did or had done under my direction on

(Deposition of Charles Dimmick.)

the Sunset lode and Sunset mill site, and all work I ever did in any way was practically under orders from Mr. Saunders, carrying out the general instructions I had from him. The details were left to me or Mr. Breckon, who was sent there by Mr. Saunders. When Mr. Breckon came down from Salt Lake under instructions from Mr. Saunders I couldn't say whether he conferred with me at all times or not. I think I saw Mr. Breckon at each time he was there. I cannot say that he made known to me each time what the purpose of his visit was, but my general recollection is that he talked matters over with me when he came. I gave him such assistance as he needed in carrying on the work under Mr. Saunders' direction. I paid some of the men who assisted Mr. Breckon in these services and Mr. Saunders paid others. Those who were paid by me were the men who were working under me on the Buckskin Mountain ranch. I don't know of my personal knowledge who paid those who were sent down there by Mr. Saunders. I didn't locate the Noonday lode, and don't know who did.

Q. I now call your attention to Government's Exhibit No. 10, and particularly to that part entitled "Final oath for surveys," upon which appears your name and the name of Leroy Breckon, and I will ask you whether or not you recall what work you did in connection with this Noonday lode? [54]

A. I had tunneling done on it; I think about sixty feet, as I remember it.

Q. Was that the tunnel you have already testified

(Deposition of Charles Dimmick.)

about which was done for the purpose of developing water?

Counsel for Grand Canyon Cattle Company objected on the ground that the question assumes a condition of facts not shown to have been testified to by the witness, and puts in the witness' mouth language which he had not formerly used.

Objection overruled and exception taken.

A. Yes, sir.

WITNESS.—(Continuing:) The other work that was done by me or under my direction on this Noonday lode was piping water for the purpose of watering stock. I think there was no particular or unusual kind of piping done in the tunneling or near the mouth of the tunnel on this Noonday lode. I presume there was a perforated standpipe at the mouth of this tunnel, because I had it in all pipelines, and I think in all the tunnels. The purpose of this standpipe was to keep them from clogging up so as to let the water through the pipes that carried the water off from the tunnels.

I know Leroy Breckon; he is John T. Breckon's son. He didn't work under me; he came down with Mr. Breckon from Salt Lake. I didn't pay Leroy Breckon or his father for their work.

There were no improvements of any kind on the Noonday lode other than those I have testified to. This tunneling, which was done for water and which I have set out fully in my testimony concerning the Noonday lode, must have been the same work that was computed as assessment work on the Noonday

(Deposition of Charles Dimmick.)

lode. There was no other work done on there; I never saw any mineral mined or shipped from the Noonday lode. My attention being called to Government's Exhibit 10, and to that particular part entitled "Proof posting notice and diagram" whereon appears the signature of myself and Charles Lewis, I will state that I posted a notice. Charles Lewis was a man in my employment as ranch foreman of the Buckskin Mountain ranch. My signature at the end of the paper to which my attention has just been called is either my signature or a very good copy of it, and I recognize the signature there as that of Charles Lewis. I have no recollection of a party named John M. Ross. I didn't locate the Emmett lode, and don't know who did. [55]

Q. I now call you attention to Government Exhibit No. 11, and especially to that part thereof entitled "Final oath for surveys" whereon appears the names of Leroy Breckon and Charles Dimmick, and I will ask you to look over this exhibit and to refresh your memory and tell us just what you did or had done in connection with the Emmett lode.

A. I did the tunneling and piping, of which I have already stated, and that is all I have any recollection of.

WITNESS.—(Continuing:) There was no other development work of any kind that I recall on the Emmett lode, and the tunneling and piping I have testified about was done for the purpose of developing water, and the water was piped away for the purpose of stock watering. There were no buildings

(Deposition of Charles Dimmick.)

or improvements of any other kind in connection with this Emmett lode.

Referring back to the Jacobs lode, there was cabins built around there other than this sawmill; there was one house of two rooms, one room about 16 by 20, the other about 8 by 20, just used for camp houses, and one 14 by 16 or 14 by 18, used for storing purposes. These were all the buildings that the Jacobs lode had other than the sawmill I have spoken of. The first house I have described was a camp house used by men employed while caring for the cattle on the ranch, and in the storehouses we kept stored anything we might have for storage—salt, groceries, general supplies for ranch use, and amongst them salt for the cattle. There were some groceries around Jacobs Lake, one was a cattle corral and some chutes, there was another small corral there not used for cattle purposes, but used by the sawmill people for catching or handling stock, milch cows or any stock they had around. There was a fence around the lake; I had that put there. That fence was put there for the purpose of handling cattle. It was for the purpose of keeping the cattle from wading into the lake and keeping them over night, and for separating and branding. We put them in there from time to time and kept them over night. There was a well or shaft sunk on the Jacobs lake. The purpose of that was to see whether they could get water or not when the lake was dried up. It was sunk at a time when the lake was dry.

[56]

(Deposition of Charles Dimmick.)

Q. I again call you attention to Government's Exhibit No. 11, and particularly to that point thereof entitled "Proof of posting notice and diagram of claim" whereon appears the names of Charles Dimmick and C. D. Crosbie, and ask you to state whether or not you recall having posted notices on that claim?

A. Yes, sir.

WITNESS.—(Continuing:) I remember posting the notices and I recognize also the signature of C. D. Crosbie. I don't know a person by the name of John J. Hawkins.

The nearest newspaper to the Buckskin Mountain ranch was, I presume, the Coconino Sun at Flagstaff. At times there was a little paper published at Kanab, Utah, about the same distance. It ran a little while and then closed down. I don't know whether the paper was published at Kanab during the years of 1904, 1905 and 1906.

From the time I first went to work on the Buckskin Mountain ranch in 1897 down to the time that Saunders and Haley sold out to the Grand Canyon Company, Mr. Saunders visited the ranch. I think at one time there was two years between his visits. I couldn't say what years they were, but he generally visited once a year. I couldn't say whether this period of two years absence was prior to 1900 or afterwards, but with that exception I think he visited the ranch at least once a year. I don't think he visited the ranch more than once a year. The purpose of these visits was to look over things in general

(Deposition of Charles Dimmick.)

and for a conference with me about the situation and to give me instructions. On these visits he generally stayed about a week, and then went back to Salt Lake. On one of these occasions I think he brought Breckon, but I cannot recall the year, and cannot recall whether it was in connection with the matter of the surveying out the pipe-lines. It surely must have been in connection with some surveys in the Buckskin Mountain ranch that he brought Breckon, but I couldn't say. It was after I was appointed ranch foreman, but I couldn't say whether it was shortly after or considerable after. I don't remember the time he came with Breckon and don't recall any conference with him, and Breckon together. That was the only time he came with Mr. Breckon that I can recall. [57]

When I made payments to men employed by me or working under me for any development they did for water or pipe-lines, I paid them by check on the Commercial National Bank of Salt Lake. I signed those checks myself. There was no fund on deposit against which I might check. I drew a sight draft in every instance on B. F. Saunders. I made such drafts on B. F. Saunders before the time I was appointed ranch foreman, but not on the Commercial National Bank. They were directly on B. F. Saunders, Salt Lake. That was in accordance with instructions given me by Mr. Saunders orally. Those drafts were always paid by Mr. Saunders and the bank. After I was appointed ranch foreman in 1901 on to the sale to the Grand Canyon Cattle

(Deposition of Charles Dimmick.)

Company by Saunders and Haley, I spent practically all of my time on the Buckskin Mountain ranch caring for that business. I have examined in the course of my testimony the map to which my attention was called and which bears the title "Kaibab National Forest, Arizona," and which constitutes a part of the diagram of the proclamation of August 23, 1910. I recognize the claims and the legends on the map as being approximately the locations as I recall them. From the time I was appointed foreman in 1901 to the time of the sale of the Grand Canyon Cattle Company I purchased a part of the supplies that were used on the Buckskin Mountain ranch, and Mr. Saunders made purchases. I think Mr. Saunders and I attended to about everything in the matter of the purchase of the supplies. I presume the bulk of them were purchased by Mr. Saunders. I didn't, in my yearly reports to Mr. Saunders, indicate the amount of supplies that would be needed for the coming year. He ascertained the amount of supplies that would be needed from orders sent to him by me from time to time. Then he would have the order filled out and sent to the railroad and I had it freighted to the ranch. That was not the case on the Kane Beds ranch. That was under different arrangements from ours. There was another foreman for that ranch—different ones there—George Cropper, George Voice and A. H. Kearns. I don't recall any others at present.

George Cropper lives, I presume, at Deseret, Utah. George Voice is dead, and A. H. Karns lives at

(Deposition of Charles Dimmick.)

Gunnison, Utah. They served practically all three during the same time, during the years 1901 to 1907. George Voice worked under me on the Buckskin Mountain ranch from 1902 to 1905, at different times in handling cattle. [58]

On the Alaska lode the developments for water the fixing and improving and fencing and puddling of the lake.

Mr. STEVENS.—I suppose the objection that was offered before should also be understood to run through the entire deposition, with the same ruling.

The COURT.—Yes, the same ruling.

WITNESS.—(Continuing:) The water there was in pool form when it was there. It was only there at times during the year. I don't know anything about the Alaska mill site, but I recall that Alaska lode. The Alaska lode was located near Mile-and-a-half pond or lake. The water on the Alaska lode was developed and used for stock watering purposes. There was no piping away from it. I do not recall the Snipe lode, but I recall the lake known as Snipe lake. I do not recall whether there was a mineral location made on that. I recall that there was development or improvement of Snipe lake for the purpose of watering stock. That was developed practically the same as Mile-and-a-half and Alaska. That is, it was a pond and used for stock watering purposes and no pipe in connection with it.

I recall East lake, and that was developed for stock watering purposes in the same way. It was a natural pool. I don't know whether there was a

(Deposition of Charles Dimmick.)

mineral claim on East lake.

Counsel for the Government states for the information of counsel that the Noonday lode unpatented, is shown by the Government records to be on East lake.

WITNESS.—(Continuing:) I recall Frank lake, or Frank pond. That was a natural pool also, and was developed for stock watering purpose.

I also recall Crane lake; that was a natural pool and developed for stock watering purposes. There was no piping at Frank lake or Crane lake. It was unnecessary. These lakes, namely: Crane, Frank, East, Snipe and Mile-and-a-half lakes, were protected by fences. They were fenced for the purpose of handling stock, the same as Jacobs lake. There was a small cabin at Snipe lake not used for anything. There had been a part of a cabin [59] at East lake. There was a part of a cabin at Alaska lode and Mile-and-a-half. The cabin at Mile-and-a-half was used for camping purposes and for storing salt.

I recall Fracas lake, but I don't recall the location of a mill site at that lake. I don't know of any mining ever having been done or mineral having been shipped from Crane lake or Frank lake or East lake or Mile-and-a-half lake, the Snipe lake or Fracas lake. I knew there was a mineral location on Crane lake, but I am not positive about its being Crade lode. But there was some mineral location on that. I don't know a lake known as North lake on the Buckskin Mountain ranch, nor do I know a couple

(Deposition of Charles Dimmick.)

of lakes known as Middle and South lakes. I know those lakes by the name of Three lakes. I know that Three lakes had scrip placed on them by Mr. Saunders. The development on Three lakes for the purpose of developing water and providing water for stock was practically the same development as the other lakes on the Buckskin Mountain. Those Three lakes were natural pools of water, and the entire three of them covered possibly twenty acres.

Between the time of my going to work on the Buckskin Mountain ranch in 1897 down to the time of the sale to the Grand Canyon Cattle Company, there were improvements made under my direction. A house about twelve by sixteen, a fencing of the entire water. The house was used for storage for such supplies as we needed in that locality. Amongst the supplies, salt for the use of the cattle. There was no piping of any sort or troughs in connection with these Three lakes development.

I know a location known as the Two Mile lieu tract. There was no lake there. The development at this Two Mile lieu tract was a tunnel for waters, piping it, tanking it, reservoiring it and building corrals for the purpose of watering and caring for stock. This was done under Mr. Saunder's direction. At this Two Mile tract there had been some development of water. That was what the tunnel was for. I think the tunnel was about 125 feet. There were buildings about the Two Mile track, a rock house, two rooms, one 12 by 16 and the other 10 by 13. I think that house was used for a camp

(Deposition of Charles Dimmick.)

house and storage house, among other things for the storage of salt for the use of the cattle. [60]

I know another lieu selection known as One Mile tract. The development upon that was tunneling for water and piping for water for the use of cattle. There was about a hundred foot of tunneling on the One Mile tract, and that was done for the purpose of developing water there, and it was piped out to a trough. There was fencing done there under my direction and the development work was done under my direction at the order of Mr. Saunders. There were no buildings on the One Mile tract.

I know a tract known as House Rock lieu tract on the Buckskin Mountain ranch. At House Rock there was a hundred foot tunneling, water piped out, rock house 12 by 14, I believe. Water piped into reservoir and tanks, fencing for watering stock. These developments were made under my direction at the order of Saunders.

I know a lieu selection known as Jacobs pool tract. There was a spring developed there, practically the same as House Rock Spring, and for the same purpose, and some improvements. This piping and tunneling was for the development of water for the use of cattle and was done under my direction at the order of Mr. Saunders.

I knew a person by the name of Murray Averett. He worked under me on the Buckskin Mountain ranch, but I cannot recall the year. It was before the sale by Saunders and Haley of the Buckskin Mountain ranch to the Grand Canyon Cattle Company. He

(Deposition of Charles Dimmick.)

worked under me I should judge about six months in general ranch work. Mr. Averett assisted in the development of these water concerns that I have described in my testimony. Most of his work was on water development.

I know a person by the name of Hinton Syler. He worked under my direction on the Buckskin Mountain ranch, but I don't recall in what year. It was before the sale to the Grand Canyon Cattle Company. Mr. Syler assisted me in the development of these water places.

I know a person by the name of Alf Pardners. He worked under me on the Buckskin Mountain ranch and assisted in the development of the water supplies I have described.

I know a person by the name of Edgar L. Clark. He never worked on the Buckskin Mountain ranch under me. He worked for Saunders and Haley at times in the handling stock, buying and selling stock. He did some work on the Buckskin Mountain, but very little, and not under my direction. [61]

I know a person by the name of Howard Young, or H. B. Young, who worked under me on the Buckskin Mountain ranch and assisted in the development of the water claims described by me.

I know Frank S. Brown. He worked under me and assisted in the water development of the Buckskin Mountain ranch also.

I know a person by the name of D. K. Judd. I don't think he worked under me on the Buckskin Mountain ranch, nor, to the best of my knowledge

(Deposition of Charles Dimmick.)

did he ever work for Saunders and Haley, but I have no distinct recollection on that.

I had authority from Mr. Saunders to employ what hands I needed on the Buckskin Mountain ranch, and I employed them to help out on the ranch and care for the cattle or any way that I needed them.

Q. Your authority in that regard was such that you could employ these people as you needed them on the Buckskin Mountain ranch and arranged the matter of their compensation without reference to Mr. Saunders?

Objected to as irrelevant and immaterial.

Objection overruled, and defendant, Grand Canyon Cattle Company, excepted.

A. Yes, sir.

WITNESS.—(Continuing:) I did so employ them. When I needed supplies I made out requisitions or reports showing what I needed, transmitted them to Mr. Saunders and he turned the order over to somebody, and had the supplies sent down to me. That is, the bulk of supplies. Some I bought direct myself, but when I didn't buy them direct, they were handled in the way I have indicated. Mr. Saunders gave me absolutely free scope in that matter.

All of the testimony I have given with regard to the development of water, the location of improvements, scrip and mineral claims refers to the time prior to the sale to the Grand Canyon Cattle Company, and the conditions I have described in these respects were the conditions that existed prior to that sale.

(Deposition of Frank S. Brown.)

Counsel for the Government then stated that he desired to read the testimony from here on at a later time. [62]

Deposition of Frank S. Brown, for the Government.

Mr. Sheridan then offered and read in evidence the deposition of FRANK S. BROWN, who testified as follows:

My name is Frank S. Brown; I live in Fredonia, Arizona. I am forty-one years old, and my occupation is stock-raising and farming. I have been in that part of the country about thirty years. Fredonia is on the north side of the Grand Canyon. My principal occupation during the time I have lived down there has been just a common laborer, working wherever I could get a job. I have worked in connection with stock-raising prior to the present time. I was engaged in stock-raising in that part of the country as far back as about twenty years ago. I have been in the stock-raising business for the past twenty years. During my work down there in connection with stock-raising and at jobs I became pretty well acquainted with the Buckskin Mountain ranch, formerly belonging to Saunders and Haley, and now claimed by the Grand Canyon Cattle Company. I was acquainted with that country long before Saunders ever bought it, and continued to be familiar with it during Mr. Saunders' ownership, and am familiar with it at the present time. I have met Mr. Saunders at Fredonia, Arizona, my home, just before he bought the Buckskin Mountain property. He bought the remnants of the cattle and

(Deposition of Frank S. Brown.)

also the ranch from Fotheringham. I don't know whether Mr. Fotheringham held the property personally or whether some one was associated with him.

I knew the ranch at the time Fotheringham claimed the places down there, and I was at the time familiar with the watering-places in that part of the country. I have rode every range and been over it for the past twenty years. I am familiar enough with these springs or water places to name some of them—Jacobs lake, Three lakes, Mile-and-a-half, Franks lake, East lake, Snipe lake, Crane lake V. T. Park lake, Greenland, Neill Spring, Bright Angel Spring, Basin Spring, and the Dutchman. When the term lake is used I mean just pools. These places that I have named were all natural pools with the exception of some of the springs I have mentioned. I just gave the names as they are known on the Buckskin Mountain. I don't mean that all those I have named are natural pools; there are some springs and some of these springs have been developed. I [63] believe working on the Buckskin Mountain ranch. Charlie Crosbie was doing the work. He is now dead. I don't know any other person who was working there developing water. With reference to all these watering-places and with reference to the Buckskin Mountain ranch I have seen any mining being done down there at the time it was claimed by Saunders and Haley. I never saw any ore shipped out of there.

I know Charles Dimmick. I met Dimmick prior

(Deposition of Frank S. Brown.)

to the time that Saunders and Haley bought the Buckskin property. It was about 1900 the first acquaintance I had with Dimmick. I continued to be in touch with him from that time on, for three years. During the time I was forest ranger I was working with Dimmick. My work in the Forest Reserve was I had in charge the east side of the mountain and I was connected with Dimmick. Part of my work as Forest Reserve ranger was to look out for the Forest Reserve on the east side of the Buckskin range and I was connected with Mr. Dimmick in that way. I rode the range with him. I knew Mr. Saunders for a long time. During all the time I knew him I never knew him to be engaged in any business other than stock raising.

Q. Did the people down in that part of the country as far as you know of your own personal knowledge regard Mr. Saunders as a stockman or mining man?

Objected to as irrelevant and immaterial and calling for the conclusion of the witness.

Objection sustained, and the Government excepted.

(A. As a stockman.)

WITNESS.—(Continuing:) I was employed by Mr. Dimmick in hauling supplies and such things as freight from Fredonia. That was during the year that Saunders and Haley sold to the Grand Canyon Cattle Company—just when they were turning over the cattle, that was in October. I cannot recall the year. They were delivering the cattle at the time I

(Deposition of Frank S. Brown.)

delivered a load of oats to Dimmick at Three lakes. I didn't meet any of the Grand Canyon Cattle Company down there at that time. I saw them. [64]

I saw Mr. Stevenson and a man I supposed to be Mr. Marshall. I know it was Mr. Stevenson, because Dimmick introduced him to me the next spring, and I recognized him when I was introduced to him that it was Stevenson who was there the fall before. I never had any conversation with Mr. Stevenson about the Buckskin Mountain ranch.

Q. When you rode the range with Mr. Dimmick, what was Mr. Dimmick doing?

Mr. STEVENS.—I object to that question on the ground it calls for the conclusion of the witness, and I object to the answer as not being responsive and as a conclusion of the witness.

Objection sustained by the Court, and the Government then and there excepted.

(A. He was superintendent of the Grand Canyon Cattle Company.)

WITNESS.—(Continuing:) I was well acquainted with him several years before that transfer and rode over the Buckskin Mountain ranch with him.

These watering places that I have named were all within the National Forest as I understood it. I know of other watering places that were claimed by Saunders and Haley outside the Forest Reserve. Some of them were the Two Mile, One Mile, House Rock, The Pools, Soap Creek; I believe that was all. I never saw any mining done by Saunders and Haley

(Deposition of Frank S. Brown.)

on any of these places that I have last named, nothing only the development of water.

(On cross-examination by counsel for the Grand Canyon Cattle Company, the witness testified as follows:)

I have been employed in connection with the stock raising business for about twenty years on a small scale—not very extensive. Later on I was a forest ranger from 1907 until two years ago. I went to work I believe the 15th day of May, 1907. When I was employed as a forest ranger I was engaged in the stock raising business. I had people looking after my cattle interests. [65]

(On redirect examination by Mr. Sheridan, the witness testified as follows:)

My headquarters was on the Kaibab Forest when I was forest ranger, during the summer season at the V. T. Park, the summer headquarters of the Grand Canyon Cattle Company. My station was close to them. During the winter-time I was stationed at House Rock Valley, right along the boundary line of the Forest Reserve. I didn't have any permanent station.

Q. Did you know any other forest rangers down there at that time?

Mr. TULLER.—Objected to as immaterial.

Objection overruled, and the defendant, Grand Canyon Cattle Company, excepted.

A. Yes, sir.

Mr. TULLER.—I make the same objection to the rest of the questions in this deposition.

(Deposition of Frank S. Brown.)

Objection overruled, and the defendant, Grand Canyon Cattle Company, excepted.

(Thereupon further reading of the deposition was continued.)

WITNESS.—(Continuing:) There were D. K. Judd, Charles Mace, William Mace, William Carlow, Raymond Pratt. I knew a forest ranger by the name of Selden F. Harris. He had charge of the Kaibab National Forest for nigh onto a year. I didn't work under him. John H. Clark and James L. Pelton were in charge of the forest when I was working there. Mr. Harris preceded the supervisors under whom I worked. I knew Mr. Pratt.

With reference to all these watering places I have mentioned within the reserve and outside of the reserve, I never during all the time I know that country knew of any mining being done on these watering places, or in the neighborhood of them, only the development of water. [66]

Deposition of D. K. Judd, for the Government.

Counsel for the Government then offered and read in evidence the deposition of D. K. JUDD, in which the witness testified as follows:

My name is D. K. Judd, and I am in the United States Forest Service as ranger, stationed at the Kaibab Forest. I have been stationed there since 1905. During my service as forest ranger on the Kaibab Forest I became acquainted with that part of the country known as the Buckskin Mountain ranch owned by Saunders and Haley formerly, and now

(Deposition of D. K. Judd.)

owned by the Grand Canyon Cattle Company. I have met the people in charge of the Buckskin Mountain ranch. I met Mr. Dimmick. His position there was superintendent at the ranch. I met some of the people working under him shortly after my arrival at the Kaibab Forest in 1905. My duties as forest ranger required me to ride over the country pretty generally. I don't know that I had any conversation with Mr. Dimmick or those working under him as to the extent of the Buckskin Mountain ranch or range. I was familiar with it by reason of my official duties. I had something to do with the reporting and inspection of a number of cattle kept on that ranch by Saunders and Haley, and in that way became familiar with the extent of the ranch, and I have been there since. At no time since I went down there did I know of any mining being done by Saunders and Haley on the Buckskin Mountain ranch. Since I have been there I have been located at nearly all the stations on the Forest Reserve. At one time I was located on the east side, or what is known as the Grand Canyon Cattle Company's ranch. That was after the sale by Saunders and Haley to the Grand Canyon Cattle Company. Prior to the sale by Saunders and Haley the Grand Canyon Cattle Company I was stationed at or near the Buckskin Mountain ranch at Quakingasp, to the east of the line. It was near a water place about five miles from Dry Park. There was no other particular name that the watering place was known by. I don't remember

(Deposition of D. K. Judd.)

exactly when the sale was made by Saunders and Haley to the Grand Canyon Cattle Company. As I remember it was six years ago, or about 1907. [67]

Deposition of Howard B. Young, for the Government.

Counsel for the Government then offered in evidence the deposition of HOWARD B. YOUNG, in which the witness testified as follows:

My name is Howard B. Young, and I live at Kanab, Kane County, Utah. My occupation is a little of everything—farming principally. I have lived in that part of the country all my life; I am now about thirty-four years old. While living down in that part of the country I became acquainted with the ranch known as the Buckskin Mountain ranch. B. F. Saunders owned it at the time I became acquainted with it. I worked for Mr. Saunders in the House Rock Valley and on the Buckskin Mountain doing a little of everything, just kind of a roustabout, driving teams—general ranch work. When I began working the superintendent was John Neill. His successor as superintendent was a man by the name of Majors, and Hammy Kearns followed him as superintendent. Another superintendent during the time I was working on the Saunders and Haley ranch was Charlie Dimmick. When I first began work I was working under Mr. Neill as a ranch man and received a salary of thirty-five dollars per month. While I was employed on the Saunders ranch under Mr. Neill I was called upon to do development work on a number of watering places. Some of them were

(Deposition of Howard B. Young.)

the House Rock, Kane, South Canyon, The Pools, and Emmett Springs.

Q. What kind of work were you doing on these places? A. Just development work.

Q. For the purpose of developing what?

Counsel for Grand Canyon Cattle Company objected as immaterial, irrelevant and incompetent.

Objection overruled and exception taken.

A. Water for watering cattle. What I have said relates to my work under Mr. Neill, and I didn't do any work of that kind under any of the other superintendents until Dimmick took charge. When I worked under Mr. Dimmick on the Saunders ranch I did a little of everything. Hauling salt, working on watering places and corrals. I didn't do any development on any of the watering places under Mr. Dimmick, only just to fix up the spring so water would go through the pipes. The pipes were clogged up and the water would not go through. I assisted in relaying the pipes under Mr. Dimmick. The purpose of these pipes was for watering stock. I never did any mining under Mr. Dimmick. I did a little mining under Mr. Neill at Jacobs lake. The mining work that I did at the Jacobs lake was just running a shaft into the south side of the hill. It was an open cut about fifteen or twenty feet long and about six feet wide, just drifted into the hill. At the farthest point into the [68] hill it was about six feet deep. There was no covering over it. I didn't do any other mining work on Jacobs lode under Mr. Hill. David Rider assisted me during the time I was doing that

(Deposition of Howard B. Young.)

work, he was employed there under Neill, doing team work and a little of everything, just the same as myself. He started in at a salary of thirty-five dollars per month, and that was what he received at the time he was working with me.

Q. So now, as I understand you, at the time this mining work was being done on the Jacobs lode by yourself and David Rider under the direction of Mr. Neill, you were receiving thirty-five dollars a month as a hand on that ranch, and so was David Rider?

Mr. TULLER.—Now, if the Court please, we allowed several questions of this kind to go in, but we object to any evidence as to the salaries of these men were receiving, as being incompetent, irrelevant and immaterial and outside of the issues in this case.

The COURT.—I sustain the objection.

Mr. SHERIDAN.—Note an exception. As I understand it then, we will leave out any testimony as to the cost of the work or any testimony in regard to the value of the development work on these claims.

The COURT.—Yes, about the salary this man was receiving.

(A. Yes, sir.)

(The following testimony was excluded under the above ruling of the Court:

Q. Did you or Rider receive any extra compensation for the work you did on the Jacobs lode—the mining work? A. No, sir.)

WITNESS.—(Continuing:) That was all the mining work I did on the Jacobs lode, and that was done in August, 1902.

(Deposition of Howard B. Young.)

Q. Now, what, if you know, was the purpose of doing that work?

Mr. TULLER.—We object to that as it calls for a conclusion of the witness.

Objection overruled, and the defendant, Grand Canyon Cattle Company, excepted. [69]

Mr. TULLER.—The same objection may be considered to all this testimony I suppose, along this line?

The COURT.—Yes.

A. For the purpose of holding that property there for mining purposes, I guess, as near as I can remember.

WITNESS.—(Continuing:) I don't know as it was for mining—just for the watering of stock. So I wish to correct my answer and say the assessment work was being done to hold the property for the watering of stock. I never saw any mining there other than what I have testified to. I never saw any ore shipped out of that property. I have seen stock around there. They had other improvements on the Jacobs lode, houses and corrals built there for the purpose of handling cattle. I never had any conversation with Mr. Neill at the time this work was being done regarding the work. Mr. Neill gave me instructions concerning this open cut and how big to make it, and what to do with it. Told us to make it so wide and so long.

Q. Now, did you do any mining under Mr. Neill any place else on the Buckskin Mountains or Saun-

(Deposition of Howard B. Young.)

der's and Haley ranch there, than this on the Jacob's lode?

Counsel for Grand Canyon Cattle Company objected on the ground that it is incompetent, irrelevant and immaterial and no authority shown for Mr. Neill, which objection was overruled and exception taken.

A. No, sir.

Q. Did you do any water development at other places?

Counsel for Grand Canyon Cattle Company objected on the ground that the question called for a conclusion of the witness, which objection was overruled and exception taken.

A. Yes.

Q. As I understand you then, all the work you did at the other places which you have mentioned, with the exception of Jacob's lode, was for the purpose of developing water only.

Counsel for Grand Canyon Cattle Company objected to the question as calling for a conclusion of the witness, and as incompetent, irrelevant and immaterial, and no authority shown.

Objection overruled and exception taken.

A. Yes. I didn't have any instructions from Mr. Neill about my work on these other places. He was the overseer. He told us how to put the cuts in the tunnel for the pipes.

Q. Did he say to you at the time this open cut was being done on the Jacobs lode that it was for mining assessment?

(Deposition of Howard B. Young.)

Objected to as incompetent, irrelevant and immaterial.

Objection sustained, and counsel for the Government then and there excepted.

(A. Well, I don't remember now just what he said, that was the understanding I got.)

Q. In other words, it was your understanding that this was to count as assessment work on the mining claim covering Jacobs lode? A. Yes, sir.

Q. And that the purpose of it was as you have testified, to hold the property for stock watering purposes? [70]

Objected to as calling for a conclusion of the witness.

Objection sustained, and counsel for the Government excepted.

(A. Yes, sir.)

WITNESS.—(Continuing:) Ben C. Majors was at one time superintendent of Saunders ranch. I assisted Charles Dimmick in the making of surveys of these watering places; just Kane Spring, One-Mile, House Rock and the Pools, and in the other places I have named I assisted in the fixing the pipes for the purpose of developing water for stock.

I met a person by the name of John T. Breckon, the first time at Marysvale. I met him at the Saunders ranch in May, 1905. He was then on his way to the House Rock Valley. I assisted Mr. Breckon in his work while he was down there. I went from Marysvale with him to the ranch. We went up and

(Deposition of Howard B. Young.)

he surveyed these watering places. He surveyed the Kane first; next the Pools, and from there to House Rock. At Kane I assisted him by holding the tape while he measured around there. When we went to House Rock I drove the team while he and Dimmick chained the pipe-line. I don't know if any of these springs or pools were held under mining claims by Mr. Saunders only this one at Jacobs lode. I was called upon to execute affidavits in connection with the surveys and the work I did there. Kane Springs was one of the watering places. In connection with it I made an affidavit but I don't remember whether I signed just one or two at a time. I don't remember a mineral claim made by Mr. Saunders known as the Sunset lode, but I remember the name of the Sunset mill site. It seems to me that this Kane Spring was located under that name. I would not be certain.

Q. I now call your attention, Mr. Young, to Government's Exhibit No. 2, and to that part thereof entitled, "Affidavit of five hundred dollars improvements," upon which appears the names of Charles Dimmick and H. B. Young. I will ask you to read this affidavit over and see if it will refresh your memory as to the work therein described and the conditions surrounding it.

A. Yes, I remember that as the affidavit I signed at John Brown's residence in Kanab. [71]

WITNESS.—(Continuing:) I was at Kanab, Utah, at the time I signed this affidavit. Charles Dimmick brought it to me to sign. Kanab is about

(Deposition of Howard B. Young.)

fifty miles from the claim that is described here, the Sunset mill site. I worked there in 1902. This affidavit I signed in 1905, so I think the affidavit related to work done in 1902.

Q. What did Mr. Dimmick say to you, if anything, when he brought this affidavit to you to sign?

Mr. STEVENS.—We object to that on the ground it is incompetent, irrelevant and immaterial, and calls for hearsay evidence.

Objection sustained, and the counsel for the Government then and there excepted.

(A. He asked me if I would sign an affidavit that I had done work on that claim and I told him yes.)

Q. Did you read over the affidavit before you signed it?

Mr. TULLER.—The same objection.

Objection overruled and the defendant, Grand Canyon Cattle Company, excepted.

A. No, sir.

Q. You just signed it at the request of Mr. Dimmick, and let it go at that? A. Yes, sir.

Q. You didn't know what it contained?

A. No, sir, I didn't know what it contained.

Q. You didn't know at the time you signed it?

A. I didn't know the full meaning of it at the time. I didn't understand it.

To each of the last three questions the same objection was made by Mr. Tuller, which objections were overruled and the defendant, Grand Canyon Cattle Company, excepted.

(Deposition of Howard B. Young.)

Q. Did Mr. Dimmick in asking you to sign this affidavit say it was for a mining claim that you can recall?

Objected to as irrelevant and incompetent.

Objection sustained, and the Government then and there excepted. [72]

A. No, I can't remember.

Q. Give us just as nearly as you can recall just what he said when he brought the affidavit to you—the substance of what he said.

Objected to as irrelevant and incompetent.

Objection sustained and the Government then and there excepted.

(A. Well, he asked me if I would sign an affidavit that I had done work on certain claims there, and I told him yes. I went right down with him and John Brown to his residence and signed these papers.)

WITNESS.—(Continuing:) Mr. Dimmick didn't say anything to me at the time what the purpose of this affidavit was.

Q. Did you at the time you signed the affidavit know what the purpose of it was.

Mr. TULLER.—Objected to as calling for the conclusion of the witness.

Objection sustained, and counsel for the Government excepted.

(A. Well, the purpose was to hold these claims as watering places.)

Q. Now, it says in this affidavit, Mr. Young, that the labor and improvements made on the Sunset lode and Sunset mill site by the applicants and his gran-

(Deposition of Howard B. Young.)

tors exceeds \$500 in value. Did you at the time you signed this affidavit, or at any time, know that \$500 worth of work had been done by anybody on the Sunset lode and Sunset mill site?

Mr. TELLER.—The same objection.

Objection sustained, and counsel for the Government then and there excepted.

(A. No, sir.)

Q. As a matter of fact all the knowledge you had as to the work done was such work as you did under Mr. Neill for the purpose of developing water? [73]

Mr. TELLER.—The same objection.

Objection overruled, and counsel for the Grand Canyon Cattle Company then and there excepted.

A. Yes, sir.

WITNESS.—(Continuing:) My recollection is not distinct as to where the Sunset lode is located. I heard the name, but I didn't pay any attention to where it was located when I was working for Saunders and Haley. I recall the name of the Sunset mill site, and I did some work there for the purpose of piping out water.

Q. Did you know at the time you were doing that work on the Sunset mill site what that work was being done for?

A. Well, for the purpose of holding the water.

Mr. TULLER.—I move to strike out the answer for the reason that the witness is not in a position to know the purpose of Mr. Saunders and Mr. Haley in having this work done.

(Deposition of Howard B. Young.)

Motion denied, and counsel for the Grand Canyon Cattle Company then and there excepted.

WITNESS.—(Continuing:) I didn't know of any other purpose, with the exception of the open cut on the Jacobs lode I know of no mining work having been done on any of the places I have named. All the work done by me other than Jacobs lode work was for the purpose of developing water.

Q. And all the work which you did on all the places you have named, including Jacobs lode, was done while you were employed as a ranch hand at \$35 per month?

Mr. STEVENS.—I object to that on the same ground as heretofore urged.

Objection sustained, and counsel for the Government then and there excepted.

(A. I worked on the Greenland Spring and developed water there with Charlie Lewis under Dimmick. I was receiving when I did that work \$45 per month, and when I did the work on all the other places I was receiving \$35 per month.) [74]

WITNESS.—(Continuing:) On the Greenland claim the work I did was fixing corrals, troughs and pipe-lines for watering stock. I received no compensation other than my pay of \$45 per month.

Q. Now, Mr. Young, I will hand you Government's Exhibit No. 13, for identification, and ask you to look it over carefully as to the places thereon marked and see if it appears to be a correct presentation of the

(Deposition of Howard B. Young.)

different watering places and mining claims named thereon?

A. Yes, this appears to be correct as far as I know about it.

Mr. SHERIDAN.—I offer this diagram, Government's Exhibit 13, in evidence; it is part of the official diagram which accompanied the President's proclamation dated August 10th, establishing the Kaibab National Forest. The marks on here have all been superimposed.

Diagram received in evidence without objection.

WITNESS.—(Continuing:) (Photograph marked Government's Exhibit No. 15 shown witness.) That is a familiar scene to me. It depicts Jacobs lake. (Photograph marked Government's Exhibit 16 shown witness.) That depicts Jacobs lake.

The COURT.—Jacobs lake then is on the Jacobs lode mining claim?

Mr. SHERIDAN.—Yes, your Honor, that is correct.

WITNESS.—(Continuing:) (Photograph marked Government's Exhibit No. 17, shown the witness.) I recognize that scene; that is Jacobs lake. (Photograph marked Government's Exhibit 18, shown witness.) I recognize that scene; that is Mile-and-a-half. [75]

(Photograph marked Government's Exhibit 19-a and 19-b, shown the witness.) I recognize that panoramic view; that is Jacobs Pools. That is a part of what is called the House Rock Valley. It comes around near the Pools, as I remember it.

(Deposition of Howard B. Young.)

(Witness indicates upon photograph.) The place here is where Jim Emmett piped out into the flat. I don't know whether they called it Emmett Springs or not. Mr. Emmett located two places that I know of and sold one of his claims to the Saunders people.

(Photograph marked Government's Exhibit No. 23, shown the witness.) I don't recognize the excavation that shows on that photograph. I don't recognize it as the cut I made on the Jacobs lode. There were two or three other open cuts made around there larger than the cut I made. They must have been about two hundred yards or more west of the one I worked on. I couldn't be sure whether the one shown in the photograph is one of those or not, with snow on the ground and taken in the winter.

(Photograph marked Government's Exhibit No. 20, shown witness.) I recognize the locality shown there. That is a scene on the Saunders ranch, a part of the House Rock Valley.

(Photograph marked Government's Exhibit No. 21, shown the witness.) I do not recognize that scene there shown.

(Photograph marked Government's Exhibit No. 25, shown the witness.) I recognize that; that is the house there at Jacobs lake.

(Photograph marked Government's Exhibit No. 26, shown the witness.) I know that place all right, but I cannot call its name. This house I don't remember. With that exception the rest of the scene is familiar to me, I wouldn't be sure to call the name of the place, but I recognize it as a scene on the Saunders and

(Deposition of Howard B. Young.)

Haley ranch on the Buckskin Mountain.

Q. Mr. Young, I again call your attention to Government's Exhibit No. 2, and to that part entitled, "Final oaths for survey," upon which appears the names of yourself and Charles Dimmick. I will ask you to look over that final oath for survey, and ask you if you recall by whom this was presented to you for your signature.

A. By Mr. Dimmick. [76]

Q. I observe that it bears date July 21, 1905. Was this final oath for survey presented to you by Mr. Dimmick for signature at the same time he presented to you the affidavit for \$500 improvements on this same claim which you stated you signed at his request?

Mr. STEVENS.—We object to that on the ground it is incompetent, irrelevant and immaterial, and it is not shown that Mr. Dimmick had any authority to engage in a conversation with this man at this time in any way to implicate Saunders and Haley.

Objection overruled, and counsel for defendant, Grand Canyon Cattle Company, then and there accepted.

A. Yes, that is the only time I ever signed papers for Dimmick.

WITNESS.—(Continuing:) That was in 1905 at the home of John T. Brown in Kanab, Utah. The surveys mentioned in this final oath were made on the 26th and 27th of May, 1905. When I was going down with Breckon from Marysville he said he was going down to obtain the title of these claims for Saunders.

(Deposition of Howard B. Young.)

That was on the 20th day of May, 1905, that I started with Mr. Brecken from Marysvale.

Q. In going down from Marysvale to the Buckskin Mountain country in company with Mr. Breckon did you have any conversation with Mr. Breckon about the purpose of the visit?

Mr. STEVENS.—The same objection.

Objection sustained, and counsel for the Government then and there excepted.

(A. No, sir, only that he was to survey these claims and obtain title for Mr. Saunders; that was the understanding I had from him.)

WITNESS.—(Continuing:) Referring to the open cut on which I worked on the Jacobs lode, about which I have already testified, David Rider assisted me in doing that work. No one else assisted except Mr. Neill, he came there and laid off the dimensions, and he was superintendent of the Saunders ranch at that time. I don't recall the young man by the [77] name of Leroy Breckon. He didn't work with me at the time I did this work.

Q. How long did it take yourself and Mr. Rider to make this open cut you have described?

Mr. STEVENS.—This certainly falls within the same objection made during other testimony.

The COURT.—Do you introduce it for any other purpose?

Mr. SHERIDAN.—I do not your Honor; I will contend that is the sole purpose of it.

Objection sustained, and counsel for the Government then and there excepted.

(Deposition of Howard B. Young.)

(A. Well, it seems to me we were working on it three days, not to exceed three days.)

WITNESS.—(Continuing:) When I was in the employ of the Saunders people I was freighting salt from one place to another, and I took part of a load of provisions to House Rock. The hauling of salt for the Saunders people was at different points on the Buckskin Mountain ranch and I hauled supplies down from Marysvale to House Rock. This salt was just used for salting horses and cattle. They kept it at different points—V. T. Park, Jacobs lake, Three lakes, and quite a number of different places on the mountain. They had two houses or cabins used for that purpose. The stock didn't have access to the cabins to get the salt. They put troughs on the places where they could lick it, and other places they put it on the hard ground.

In addition to the \$35 per month I received at one time and \$45 at another, I received also board and lodging. [78]

Deposition of Hinton Siler, for the Government.

Counsel for the Government next offered and read in evidence the deposition of HINTON SILER, who testified as follows:

My name is Hinton Siler, and I live at Alton, Utah. My present occupation is working at anything I can get; any kind of a job. I am forty-three years old. I worked for B. F. Saunders only on the One Mile and House Rock, just in the valley. I worked at two points known as One Mile and House Rock. Charles Dimmick, Mr. Saunders' foreman, employed me to

(Deposition of Hinton Siler.)

work there in 1904, I believe. I went to Jacobs Pool on the 10th of June, 1904, and went to work on the pipe-line. That is the place that is subsequently known as the Pools. I went to work building a pipe-line, digging and laying pipe. That was the first work I was engaged under Mr. Dimmick. The pipe-line was built from the spring to the corral, a distance of four miles. There were about eleven of us working on the line I believe. I was at the Pools until the 4th of July. I began work on the 10th of June and the 5th of July I left the Pools.

Q. What pay did you receive for this work?

Mr. TULLER.—We object to that as immaterial and irrelevant.

Objection sustained, and the Government, by its counsel, then and there excepted.

(A. Thirty-five dollars per month.)

WITNESS.—(Continuing:) I was not engaged in working on the ranch when Mr. Dimmick had me working on the pipe-lines, I was employed especially for pipe-line work. Mr. Dimmick was there off and on while we were building this pipe-line. Mr. Dimmick had a foreman on the job at the time whom he instructed and I worked under that foreman. When we left the Pools we went to House Rock and went to work on the pipe-line there. We came to House Rock from the Pools and went to work building a pipe-line there under the same boss who was under Mr. Dimmick's direction, and worked on that pipe-line ten days. There was about five miles of pipe-line built at House Rock. I didn't help put it all in,

(Deposition of Hinton Siler.)

only worked about ten days on [79] it. That pipeline carried the water out into the valley from the tunnel out to the southwest about five miles, for the purpose of watering cattle. After I left the House Rock I went to work for Charles Crosbie at Two Mile. Charlie Crosbie is now dead. That was one of Mr. Saunders' places Mr. Dimmick employed Mr. Crosbie. The work I was doing under Mr. Crosbie was tunneling for water at the upper tunnel. I don't remember how many feet there was of the tunnel. He took a contract for fifty feet, and did some work over his contract, I don't know how much. The stone in that tunnel was red sandstone. They got water on it and piped it off to the valley as I have testified. Charles Crosbie and myself were the only persons working on that tunnel. I did this work for Crosbie in September, 1904.

I worked at One Mile on the Saunders ranch tunneling for water, under the direction of Charles Dimmick. That was in 1904. We put a tunnel in there sixty feet, under the direction of Mr. Dimmick. We were somewhere in the neighborhood of a month doing it. The rock was of the same character—red sandstone.

We took a contract later on for one hundred feet, and then the next spring we took a contract at the Kane. The contract that we took later on in the winter in 1904 was at One Mile. We did about two hundred feet of tunneling in red sandstone, for the purpose of developing water so we could handle it. They used the water for watering cattle. We came out all right

(Deposition of Hinton Siler.)

on that contract. We went to work on that two hundred-foot tunnel about the 27th of December, and quit about the 15th of April. Alf Partner was with me in that contract. The work was done under the direction of Mr. Dimmick.

After this two hundred-foot tunnel I did other work for the Saunders people at Kane ranch. The stone there was not the same kind of stone that I had worked in before, it was white sandstone, and a flinty, hard stone. On that contract my brother-in-law, James Bennett, worked with me, and we lost on that contract. We came out just about even.

When I went to work under Mr. Crosbie he paid me. In all other cases I have testified about I worked under Mr. Dimmick on a contract [80] arrangement with him. Dimmick paid for these contracts by check drawn on B. F. Saunders—sight drafts, and I cashed them afterwards.

I worked for Charles Crosbie in 1905 at the Emmett Springs.

Q. What were you doing at Emmett Springs for Crosbie?

Mr. STEVENS.—Objected to as immaterial, irrelevant and incompetent.

Objection overruled, and counsel for the defendant, Grand Canyon Cattle Company, then and there excepted.

A. Tunneling for water.

WITNESS.—(Continuing:) Crosbie was doing work for Charles Dimmick. The work was *tunning* in quicksand. I was there pretty near two years on

(Deposition of Hinton Siler.)

that job. That was at Emmett Springs and we were doing the work to get water and got some of it. The water was used for cattle.

Q. During the time that you were doing this water development work, at all these different points concerning which you have testified, under Mr. Crosbie's immediate direction, in every instance, and under the final direction of Mr. Dimmick, did you have any conversation with Mr. Dimmick at any time about the purpose of this contract.

Mr. TULLER.—Objected to as incompetent, irrelevant and immaterial.

Objection sustained, and counsel for the Government then and there excepted.

(A. Nothing only that he was doing it to let the water into the tunnels so he could pipe it out.)

WITNESS.—(Continuing:) The instructions I had in every instance were from Mr. Dimmick. While I worked under Mr. Crosbie I knew it to be a fact that Mr. Crosbie received his instructions from Mr. Dimmick as to the manner in which the work should be done. The piping was a 21½-inch pipe. Near the end at the corral it was reduced to an inch and one-half. None of the pipe there was larger than 21½ inches, and the smallest that was used was an inch and a quarter. [81]

I first became acquainted with Mr. Dimmick in 1904, in June, when I went to work at the Pools. He sent to Kanab for men to go to work on the pipe-line. I was hunting work and I went there to go to work. I had been over the Saunders ranch before that time,

(Deposition of Hinton Siler.)

and the first time I had been on the ranch for five or six years was when I went down. I was there all together from some time in June, 1904, until the end of 1905. During that time I was employed there, as I have testified, on the Saunders ranch, I never saw Mr. Dimmick or Mr. Saunders or any one working under them engaged in mining on the Saunders ranch, and never knew of any ore having been shipped from the Saunders place.

In answer to questions put by counsel for the Government, the witness testified:

The contract price for the various tunnels, except the one last mentioned, was \$2.50 per foot, and on that \$3 per foot; that I received while working under Mr. Crosbie \$1.50 per day and board.

To this testimony counsel for the defendant, Grand Canyon Cattle Company, objected, on the ground that the same was irrelevant and immaterial, and that proof of the cost or value of the work done was incompetent, irrelevant and immaterial, and outside of the issues in this case.

Objection sustained by the Court, and counsel for the Government then and there excepted. [82]

Deposition of Alf Partner, for the Government.

Counsel for the Government then offered and read in evidence the deposition of ALF PARTNER, who testified as follows:

My name is Alf Partner, and I am the same person who has been referred to as Mr. Partners, and also as Mr. Pardners. I am the only one having anywhere near that name anywhere in that vicinity. I live at

(Deposition of Alf Partner.)

Henrieville, Utah, and I do pretty much of everything and anything I can get to do. I have a little stock, a little farm and orchard. I do plastering, and work at sawmills sometimes. I am thirty-seven years old. I was employed to do work on the Saunders and Haley ranch, known as the Buckskin Mountain ranch. I was employed in 1904 at Kane ranch by Charles Dimmick, who was at that time foreman of the Saunders ranch. I done some tunnel work at Kane ranch in 1904—blasting. I don't think I did more than eleven or twelve feet there. Ernest Duffin worked with me on that job.

Mr. STEVENS.—We object to any of the testimony as to doing any of the work, or the use or purposes to which these properties were put, other than the claims in controversy, and particularly the claims covered by scrip on the ground, it is incompetent, irrelevant and immaterial.

The COURT.—I admit the evidence, certain evidence showing their relation to the outside claims, and I exclude evidence as to the value of the improvements on these four claims.

Thereupon counsel for the defendant, Grand Canyon Cattle Company, excepted to the exclusion of evidence relating to claims other than those in controversy, and counsel for the Government excepted to the exclusion of evidence showing the value and cost of the work done on the four claims in controversy, and the other claims concerning which testimony was given.

(Deposition of Alf Partner.)

WITNESS.—(Continuing:) Dimmick gave me instructions personally as to the manner in which this work should be done and he directed the doing of the work in all its particulars. We found water in the Kane tunnel, and [83] it was piped down to the Kane ranch for the purpose of watering stock. I had conversation with Mr. Dimmick as to the purpose for which this tunneling was being done and he said it was for watering stock.

I worked also at the House Rock on the Saunders ranch. Ernest Duffin worked with me. We worked under Dimmick's direction; that was in 1904.

Next after the House Rock we worked at Two Mile.

Q. What work did you do there?

A. Tunnel work.

Q. For what purpose?

Counsel for Grand Canyon Cattle Company objected on the ground that the question calls for the conclusion of the witness, i. e. an expert opinion.

Objection overruled and exception taken.

A. For the purpose of getting water.

Q. And that was done under Mr. Dimmick's direction?

A. Yes. At the Kane we did about eleven feet of tunneling and on the House Rock either fifty or seventy-five feet. At the Kane tunnel we were engaged about two weeks, and at the House Rock tunnel it might be three weeks, or a month. I cannot tell how long at Two Mile. We had to quit on account of a storm which filled the tunnel up.

I also worked at One Mile on the Saunders ranch in

(Deposition of Alf Partner.)

the same year, the latter part of 1904. That work carried us over into 1905. I was employed by Mr. Dimmick for that work and received my instructions from him the same as in other cases.

The witness further testified that the contract price for the several tunnels was \$2.50 per foot for rock work and \$2.75 for timber work; that Dimmick furnished the tools and the witness and Duffin, or Siler, furnished the powder, and that the contractors boarded themselves.

To which testimony the counsel for the Grand Canyon Cattle Company objected on the same ground as to the other evidence as to the cost of the work.

Objection sustained by the Court, and counsel for the Government excepted.

WITNESS.—(Continuing:) In stating that the purpose of this tunnel was to get water, Mr. Dimmick made that statement with reference to all those places where I worked. Duffin assisted me at the Two Mile, and Siler at the One Mile. In any of this tunneling we never failed to get water, and in each instance Mr. Dimmick told us where to put the tunnel in. [84]

Q. Did he say anything to you when you were starting any of these tunnels how much tunneling you should do or whether you should start under any certain conditions?

Mr. TULLER.—Objected to as incompetent and no authority shown on the part of Dimmick to speak for Mr. Saunders in reference to this matter.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

(Deposition of Alf Partner.)

A. He said if I was going in a certain direction he would pass the remark "Do you think you are increasing the water any?" In one place—One Mile, I said, "I don't believe we are increasing the water." He said, "If you are not increasing the water we don't want you to go any further." So we quit there and started another one.

WITNESS.—(Continuing:) I first became acquainted with Mr. Dimmick when I went to the Kane ranch in 1904. I had never been on the Saunders ranch before that time. I was there during part of 1904 and a part of 1905. During the time I was working for Mr. Dimmick on the Saunders ranch I never knew of any mining being done on that ranch by Mr. Saunders or Mr. Dimmick. I never saw any ore shipped out of the Saunders ranch by any one working for Saunders or by Saunders himself.

Q. You were pretty well acquainted with Mr. Dimmick were you not Mr. Partner?

A. Yes, sir.

Q. Did you talk with him frequently about matters while you were at work on the ranch?

A. Every time he came to where I was working we had a conversation.

Q. Did he ever say anything to you about these tunnels you were driving being driven for the purpose of developing the mines?

A. No, sir.

To the last three questions counsel for the defendant, Grand Canyon Cattle Company, objected to as incompetent and immaterial, and as calling for a

(Deposition of John T. Little.)

casual conversation between witness and Mr. Dimmick which would not bind Mr. Saunders in any way.
[85]

Objection sustained, and counsel for the Government then and there excepted.

Deposition of John T. Little, for the Government.

Counsel for the Government next offered and read in evidence the deposition of JOHN T. LITTLE, who testified as follows:

My name is John T. Little, and I reside at Kanab, Utah. I am forty-four years old; my occupation is a little of everything. I work at most any kind of work. I have been on the Saunders ranch, also known as the Buckskin ranch, off and on for twenty years. I have done work on the Saunders ranch before the transfer of the Saunders people to the Grand Canyon Cattle Company. I took a contract in House Rock Valley, I believe it was in 1905. That contract was to build a pipe line. We dug about a mile of trench and layed the pipe along the trench and covered it. Al Anderson made that contract with me. He was foreman under Mr. Dimmick—assistant to Mr. Dimmick. I worked about four days, near as I can remember. This pipe line was built to take water down further in the valley from what is known as House Rock to Lower House Rock for stock purposes.

The witness testified that the contract price for laying the pipe was twenty-five cents per rod, which was objected to on the same ground as other evidence of value or cost of work.

(Deposition of John T. Little.)

Objection sustained, and counsel for the Government excepted.

WITNESS.—(Continuing:) I knew the Saunders ranch to be a stock ranch. I was slightly acquainted with Mr. Dimmick at that time, and know he was the foreman in charge of the ranch.

I have been riding across the country in a general way for twenty years. In some places on the Saunders ranch there was quite a lot of water, and some places it was scarce. When I say quite a lot of water I meant in the form of pools. Some of these pools were called Jacobs lake, Mile-and-a-half, Three Lakes, East lake, Franks lake, Jolly Sinks, Basin, Greenland, Neill Springs. There was quite a number more of them. Neill ranch was a spring. This spring had been fixed up some. There is a spring in the Basin too. These several ponds are all the way from three [86] to four miles apart, some ten and some fifteen; scattered up the mountain. I don't believe there are any running streams on the mountains where the company's cattle run. It is a pretty good ranch up there when there is a good year for grazing.

I know where Jacobs lake is, that is on the Saunders ranch. I think that is about seven miles from the nearest water.

Q. Did you know of it being a watering place before the Saunders people got hold of it?

Mr. STEVENS.—Objected to as too general, irrelevant and immaterial.

(Deposition of John T. Little.)

Objection sustained, and counsel for the Government excepted.

(A. Yes, sir.)

WITNESS.—(Continuing:) Some of the time it was claimed by parties on the Buckskin Mountain. It seems everybody watered there—a public watering place.

Q. It had that reputation in the community?

Objected to on the same grounds.

Objection sustained, and counsel for the Government excepted.

(A. Yes.)

WITNESS.—(Continuing:) I was not there very frequently after the Saunders people got hold of it. During the time I have known the Saunders people, that they had the Saunders ranch, otherwise referred to as the Buckskin Mountain ranch, I never knew of Mr. Dimmick or Mr. Saunders or any of the people working under them being engaged in mining on the Saunders ranch. I never heard of any ore being shipped from the Saunders ranch.

I have never seen any work done on Jacobs lode at Jacobs lake. I seen a place where they said they had done some work. That was just a cut in the hill. I worked near Jacobs lake on the Coconino mines, and at the Petosky mill, and I have done a little prospecting. I have seen some cuts run at Jacob's lode a great deal like they do in the mines. I never saw any people working on Jacob's lode as a mine, and never saw any ore shipped from them. I never saw any ore there. The improvements at Jacobs

(Deposition of Donald Millett.)

lake seemed to be for the convenience of the cattle company. They had a corral for cattle, and salt.
[87]

Deposition of Donald Millett, for the Government.

Counsel for the Government next offered and read in evidence the deposition of DONALD MILLETT, who testified as follows:

My name is Donald Millett, and I live at Kanab, Utah. My occupation is dry farming. I am twenty-seven years old. I have lived at Kanab and in that part of the country about thirteen years. During that time I have been engaged as a laborer, just working out. In the course of my experience in that part of the country I became acquainted with Charles Dimmick about the year 1904. Mr. Dimmick at that time was foreman on the Bar Z ranch, also known as the Buckskin Mountain ranch. I had occasion to go over that ranch and country pretty generally when I lived out there, and was fairly well acquainted with the Buckskin Mountain ranch and the size and location of it. The Buckskin Mountain ranch and the range on which the Saunders cattle run was about one hundred miles long and fifty miles wide. Pretty good grade of range. There is water on it in the form of lakes—that is, pools and springs. During my traveling through that part of the country and riding over it I have had occasion to visit a considerable number of these springs and pools.

Q. What was the best known spring or pool down in that part of the country?

(Deposition of Donald Millett.)

Mr. TULLER.—Objected to as calling for the conclusion of the witness, and wholly immaterial and irrelevant.

Objection sustained and counsel for the Government excepted.

(A. I believe Three lakes had the most water in it.)

WITNESS.—(Continuing:) Three lakes had been known for a great number of years as a watering place.

I know a place known as Jacobs lake. That was pretty well known as a watering place and had been known as far back as I remember.

Mr. Saunders was in the cattle business in the Buckskin Mountain country. I never knew him to be in the mining business. I never saw any mining done on the Saunders ranch, and never heard of any ore being shipped out of there. [88]

Of the pools and springs I have spoken of, some of them might be one hundred fifty or two hundred yards across. Those were the largest ones, and they went down to fifty or one hundred yards. There were dry and flood periods in them. I have seen them when the water was out of them. I think some of them dried up. I have seen them very low. All these springs and pools I visited appeared to be used just for watering cattle. There were lots of cattle tracks and cattle watering around there, and corrals around the place. So far as I observed the appearance of these springs and pools impressed me as being stock range rather than mining camps.

Deposition of James S. Emett, for the Government.

Counsel for the Government then offered and read in evidence the deposition of JAMES S. EMETT, who testified as follows:

My name is James S. Emett, and I reside at Kinkley, Millard County, Utah. I am sixty-three years old and my occupation is farming. I lived at Lee's Ferry, in Arizona, on the north side of the Colorado River, for twelve years. I left there five years ago. During the time I was there I became acquainted with Mr. B. F. Saunders, and with the people in charge of the Buckskin Mountain ranch, then owned by Saunders and Haley. When I first went there a man by the name of Neill was foreman of that ranch. At the time I left there Charles Dimmick was foreman. In the course of my acquaintance with the Buckskin Mountain ranch and Mr. Dimmick I became acquainted with Edgar L. Clark. I was acquainted with him all the time I lived at Lees Ferry. I had dealings with him concerning water holes in the House Rock Valley. I located a spring called the Emett spring, and sold it to him for seventy-five dollars. I located that spring for watering cattle and sold it to him for seventy-five dollars. I cannot say how long I had my water location on that spring; it was some few months. I never noticed any mineral on that spring location. The formation that I found there was red sand rock.

Q. Did you have any conversation with Edgar L. Clark at the time you sold to him other than just what you have given us when you sold the spring to

(Deposition of James S. Emett.)

him for seventy-five dollars? [89]

Mr. TULLER.—Object to that question on the ground it is immaterial and irrelevant.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

A. He made the remark to me that he very much regretted that he hadn't got it a few days sooner. I think, if my memory serves me right, that the day had passed on which he had placed scrip on it.

WITNESS.—(Continuing:) He stated why it was that he regretted he didn't get it sooner, and that was that they would place scrip on it if he had gotten it a day or so sooner.

Mr. TULLER.—The same objection, and to all the conversation with Clark.

WITNESS.—(Continuing:) Subsequently to selling out the spring to him I went back in that part of the country. I met two men who were there working. They were Charley Crosbie and Billy Tracy. They were developing water; they were tunneling and timbering, and said they were developing water. They told me that the claim was located for mineral, and I asked them if they found any mineral, and they said there was mineral in all that country. No one else was there by those two men at the time. They were working for the Saunders Company under the direction of Dimmick.

Edgar L. Clark was associated with Mr. Saunders. He was buying cattle for them. He bought the spring from me for Mr. Saunders, and so stated when he purchased the property. I think it was

(Deposition of James S. Emett.)

about three years before I left the Lees Ferry country that I sold this spring to Clark and I left there about 1908. When I went back there and saw Crosbie and Tracy working, it was about a year after I had sold out the spring. It was about 1900.

Q. Now, Mr. Emett, if you desire to add anything further about your conversation with the parties, Crosbie and Tracy, you may do so. [90]

Objected to as incompetent, irrelevant and immaterial, and that the declarations of an agent are incompetent to prove the agency.

Objection sustained, and counsel for the Government excepted.

(A. The question arose as to the mode of developing the water. It was at the foot of a steep mountain where the sand had blown in and covered up the water. Their idea was to make a cut across, which would be less expensive and keep the water from running into the quicksand. They said Dimmick's idea was to carry on the work the way they were doing it; to tunnel in and timber it. Through this means I understood they were working under the direction of Dimmick and not following their own idea. They had to do it the way Dimmick wanted it and follow his direction. I understood they were working for Saunders and they so stated to me.)

Deposition of W. L. Walker, for the Government.

Counsel for the Government next offered and read in evidence the deposition of W. L. WALKER, who testified as follows:

My name is W. L. Walker, and I live at the pres-

(Deposition of W. L. Walker.)

ent in San Francisco. My present occupation is geologist with the Associated Oil Company. Prior to my employment by the Associated Oil Company I was in the Government service; with the General Land Office as Mineral Inspector. I served in that capacity about five years. My appointment to that position was based on a civil service examination for the position with the geological survey as assistant geologist, and the qualifications necessary for the work I performed were those ordinarily required for mining engineering practice. I am a mining engineer by profession and a graduate of Leland Stanford University of California, holding the degree of A. B. given by the Department of Geology and Mining.

My duties in the service of the General Land Office as mineral inspector consisted in the examination in the field of mining claims and other claims upon the public domain with reference to their characteristics [91] from a mineral standpoint as to whether they were mineral land and it also included the office work attendant upon the formation of reports covering my field assignments. I was so engaged during the five years that I served the Government.

While in the service of the Government I conducted mineral examinations in Montana, Idaho, Wyoming, Utah and Arizona, and while still with the Government, but with another department, I also made examinations in New Mexico, California and

(Deposition of W. L. Walker.)

Wyoming. When I say in another department I meant the geological survey and in my work in that department I was officially known as field assistant. My work was geological work, having to do with the examination of mineral claims and deposits. I entered the Government service in 1905, and was transferred to the general land office in 1907, and resigned from the latter in 1912. When I first entered the Government service it was in the geological survey. My service with the Associated Oil Company has consisted in the past of field examination, geological examination with reference to the occurrence and production of oil in the State of California, and connected with that has been the preparation of reports with reference to the probabilities of oil occurrence, as to the probabilities of commercial quantities of oil, and advise for or against the purchase of property for all purposes.

In the summer of 1903 I was at work in the mines of California practicing in the capacity of assayer, and in 1904 I was in somewhat similar work, also in California.

While I was in the service of the General Land Office of the United States I was called upon to make an examination of certain claims held by B. F. Saunders. I made these examinations under the instructions of Mr. George E. Hair, Chief of the Tenth Field Division of the General Land Office, headquartered at Salt Lake City, Utah. I made a report to the Commissioner of the General Land Office, but

(Deposition of W. L. Walker.)

through Mr. Hair, showing the result of such examination at the time of making these examinations I made notes on the occasion of each examination.

[92]

Q. I wish you would take up in chronological order the claims which you examined that were claimed by the defendant, B. F. Saunders, or by Saunders and Haley, and give us the result of your examination in detail as regards improvements, development, and the manner in which these claims were held, and I desire this question to include also any claims formerly owned by Saunders or Saunders and Haley, and which were subsequently transferred to the Grand Canyon Cattle Company.

Mr. STEVENS.—It appears that this investigation was made in 1908 after patent was issued. The question to be considered in this case is the good faith of Mr. Saunders at the time the application for patent was made. I object to it as incompetent.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

A. The first examination that I made was of the Jacob Lode, patented lode claim. This examination was made in 1908, in company with Mr. Joseph Jensen, now present, and also connected with the General Land Office.

At that an inspection was made of the claim, and general notes and observations made of the conditions in the vicinity and surrounding country. The claim was found to lie upon the surface of Kaibab plateau, some thirty miles from the settlement of

(Deposition of W. L. Walker.)

Fredonia, Arizona, and a much further distance from railway connections, Fredonia having been reached by cross-country travel. The examination was made in pursuance to my usual methods, attention being given to everything that seemed any way to affect the validity of the claim. The plat of the surveyor general, prepared as the official plat of the mineral survey, was in hand, and the claim was identified by comparison with the objects indicated upon the plat. Attention was given [93] to the improvements called for by the official survey. The examination was made of these individually, where possible. Sketches or sketch survey was carried on by Mr. Jensen and myself and a sketch plat prepared showing the objects we found upon the claim in the way of improvements on the land. I found the claim to be located covering Jacobs lake, including certain corrals which had been built about the lake, a sawmill, several dwelling cabins, and such incidental similar objects as had been used in connection with the operation of the sawmill. There was also a large pile of sawdust adjacent to the mill, with scattering slabs, and other refuse from the mill. It was observed, particularly on the northern end of the claim, that there was more or less timber of the character common to Kaibab plateau, or Buckskin Mountain, as otherwise known. The formation observed on the surface of the claim was essentially a quartzite with fragments of sandstone and soil generally covering the solid rock. The discovery point, as indicated by the official plot, was visited, and the cut

(Deposition of W. L. Walker.)

which had been excavated on the ground near this point was very carefully examined. I found at that place that the exposed formation was of a quartzite character showing practically horizontal bedding with no evidence of any material fracturing such as is sometimes noted in cases of typical mineral occurrence. No evidence of any mineral of value was shown by the rock in place in this cut. I speak of no value because of the fact that geologically the constituents of rock are minerals, and I mean by my former statement that no mineral of economic value was noted at this point. In fact, during my whole examination of this claim I did not observe any valuable mineral in rock in place, and there were no features that gave visible evidence of the occupancy of the land for mining purposes; in fact, the conditions as noted indicated its occupancy for purposes materially different than those of mining.

My next visit to this portion of the country was in 1910. The first claim visited at this later date was that known as the Crane lode, covering Crane lake. This is also upon the surface of the Kaibab [94] plateau, and its general structural and geological relations are similar to those present at the Jacobs lake. The same close scrutiny was given to the occurrences upon this claim of natural objects or those constructed by the hand of man.

I should correct myself at this point by stating that the lode to which I referred is the John F. Neill lode location, but commonly called the Crane lode, it being that situated at and covering Crane lake.

(Deposition of W. L. Walker.)

It was commonly known as Crane lode, or Crane lake property, but according to the location notice I think it was described as the John F. Neill lode. I visited the location monument on this claim at a point about two hundred feet south of Crane lake, and found a location notice there bearing the name of B. F. Saunders, describing the claim as the John F. Neill lode. In the central part of the claim is Crane lake surrounded by stock corrals as in the case of the Jacobs lode. Three small cabins were found to be situated on the south side of the lake, and the southerly portion of the claim had low, rolling hills, with a limited amount of intervening valley between these hills and those farther west.

The formation upon this claim was found to be of the same sedimentary character as observed at Jacobs lake. Limestone was also noted, but nowhere upon this claim did I observe any deposit of mineral in rock in place; in fact the observations at that time made gave no indications of the occupancy of this area for mining purposes.

Mr. TULLER.—I move to strike out the part of the answer beginning with the words “there were no features” on the ground it’s a conclusion of the witness with reference to the time. This is after the location of the claims.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted. [95]

The COURT.—These applications were made in 1906 and 1907, were they not?

(Deposition of W. L. Walker.)

Mr. BENNETT.—The locations were made before that, in 1905.

Mr. TULLER.—August 8th, 1904.

The COURT.—And patent was issued March 18th, 1907.

Mr. TULLER.—I am also going to make the objection that it covers a claim not at issue in this case rather than an objection to the question, and I move to strike out that part of the answer.

The COURT.—This Crane lode is one of the unpatented entries?

Mr. SHERIDAN.—Yes, sir, one of those of which we have offered evidence to show the intent of Saunders with relation to the other claims.

The COURT.—Motion denied.

Counsel for the Grand Canyon Cattle Company excepted.

WITNESS.—(Continuing:) At the time I made the examination there was a cabin on the claim in which was salt.

On this Crane lake there was water in the form of a natural pool occupying one of the natural sinks that are peculiar to that portion of the country. In fact, a number of these claims to which I will later refer are similarly situated; that is, enclosing what are termed lakes, but which more accurately may be described as ponds in natural depressions on the surface of the Buckskin Mountain.

(It was stipulated between counsel that wherever the Crane lode is referred to by Mr. Walker it shall be understood to refer to the same claim also referred

(Deposition of W. L. Walker.)

to by him as the John F. Neill lode, which designation was observed on the location on this by Mr. Walker at the time of his examination, and vice versa.) [96]

WITNESS.—(Continuing:) From Crane lake I proceeded to Frank's lake. I found the Frank lode to cover another one of these small lakes or ponds occupying one of these depressions in the Kaibab plateau. The geological structure of this lode claim was found to be similar to that I have before described as occurring at Crane and Jacob's lodes. That is, the formation is sedimentary and approximately horizontal bedding; some fossiliferous sandy limestone and sand stone was observed at this point, but at no point did I observe the presence of mineral in rock in place, nor were there any mining improvements such as tunnels or shafts. I observed a cabin upon this claim of dimensions about 14x16 feet, six logs high, with vertical board gables, board roof, similar to that at Crane lake. There was a corral about this lake as in the case of others heretofore described.

I first made the examination of Jacobs lode in the latter part of October, 1908; and my second visit was also in the month of October, in 1910. The Crane lake was examined by me in 1910, and that is also true of Frank's lake. The visit to East lake was in 1910 also.

The next claim inspected was East lake, that covering East lake, and referred to as Noon Day. That

(Deposition of W. L. Walker.)

is the unpatented Noonday claim. It is located at East lake on top of the Buckskin Mountain.

The conditions at this point were similar to those observed at the claims heretofore described, East lake being a small pond occupying one of the natural depressions and being surrounded by corrals and fences. At this point there were two corral fences, the inner one of the two concentric fences being the older one and essentially in a dilapidated condition; the outer one being the newer and in a condition of repair. There was a cabin near the edge of the lake of dimensions of about 12x14 feet, board floor, with one door, no window opening, a pole and board roof, and unoccupied. Geologically, the formation at this point was found to be similar to that at the other lakes heretofore described, quartzite rock being noted on the edges of the natural depression which forms the lake. The bedding here was also essentially horizontal. No mining improvements of a character such as tunneling or shafting or excavations were noted [97] upon this claim, and I did not see and could not find any evidence of the presence of mineral in rock in place at this point. There was nothing to indicate any attempted mining operations thereon. I did observe a rock monument used in the location of the claim, and certain bearing trees which had also been used by the surveyor.

The next claim inspected was the Snipe lode at Snipe lake; this examination also being made in October, 1910. Snipe lode were found to be very similar to those heretofore described at the other lodes, the

(Deposition of W. L. Walker.)

claim covering what is known as Snipe lake, a small pond situated in one of these natural depressions. The lake is surrounded by corral fences as at the other lakes. There was also a cabin at the edge of the lake of dimensions 12x16 feet, of log construction; had a shake roof; a roof extension forming a porch; there was a board floor, one door opening, no openings for windows. It was in a dilapidated condition. I found a well excavation at the southerly edge of the lake about five or six feet deep, rocked up. The formation was similar to that described heretofore, being of sedimentary origin, solid rock being generally hidden from view by surface float wherein I observed quartzite or short particles. The only other excavations I noted were three very shallow depressions about 2x4 feet in dimensions and six inches deep in soil. These were of no particular importance, except that they were evidently the work of man at some time or other. The contour of the country here is more gentle than at Frank's lake and at East lake; that is, the rim of the basin is not so high above the level of the lake. No mining operations were under way, nor were there any evidences of any in the past, and there was no showing of mineral in rock in place upon the claim.

I referred to a well near the edge of the pool or lake some five feet deep and walled up with rock; there was a frame or box upon the well right at the edge of the lake. I do not remember whether it had the above-ground box construction.

(Deposition of W. L. Walker.)

From what I observed and from my present recollection I am sure it was a well rather than a mining excavation. It was just a shallow affair dug in alluvium that fills the bottom of this depression, not solid rock; right at the edge of the lake. It served no useful purpose in mining [98] improvements. From all the appearance of these improvements—corrals, etc., about this lake there was nothing that showed that the location had been used at any time for mining purposes. The first claim inspected—this was October, 1910, was the Alaska lode location at Mile-and-a-Half lake. This lake is surrounded by a five-sided corral fence, the lake being in one of the depressions which I have noted as occurring on the top of Buckskin Mountain. Geologically, it is situated similarly to the lakes heretofore described. The formation is of sedimentary origin; the bedding is essentially horizontal. Rock in place is generally at this point covered by soil and fragmental debris from the adjacent hills. I observed a cabin here of dimensions about 14x14, built of logs, board roof, porch, door and window. I observed at a point about 150 feet distant from the rock monument on this claim a hole about 3x5 feet by 4 feet deep constructed or dug in soil in a small, dry mud basin. I also observed another hole which bears from corner No. 4, south, 11 degrees west. This was a caved hole about 6x8 feet by 4½ or 5 feet deep, dug in pinkish to yellow soil or debris, showing small, angular rock fragments. This was covered by some poles, but the poles were removed and the pit was examined. The

(Deposition of W. L. Walker.)

rock fragments are quartzite of a character common in this section of the country. No rock in place was shown in either one of these excavations. They did not show the presence of any mineral of economic value, and the claim as a whole is without even indications of the presence of mineral in rock in place. About 35 or 40 feet southeast of the last pit I have described was another essentially similar to the first, of dimensions 8x8 by 3 feet deep. There were no evidences of any mining operations being carried on or having been carried on on this tract.

With reference to the Jacobs lake, Crane lode, Frank's lode, Noon Day lode on East lake, Snipe lode and Alaska lode, the water that I observed on all of these claims in each and every instance was included within the boundaries of the mining claim.

[99]

In the case of the Crane lode the corrals surrounding the lake extended a few feet beyond the side line of the claim, and the high-water mark of the lake came right to the edge of the claim. Aside from that, my answer is yes.

I didn't go over to the Alaska mill site from the Alaska lode. We proceeded to Jacobs lake, this being the first visit at Jacobs lake on the trip in 1910. The Forest officers made an examination of the Jacobs lode at this time, and I made a re-examination, making use of my time for a further inspection of the claim which I had visited in 1908.

When I say forest officers, I mean Mr. B. L. Wheeler, Mr. T. C. Hoyt, and Mr. Scott Brown, who

(Deposition of W. L. Walker.)

were with us at that time. Mr. Wheeler, held the position of mineral examiner in the forest service at that time. Mr. Hoyt, I believe, was, at that time, Assistant District Forester, and Mr. Brown, I believe, was a ranger in the Forest Service.

At this time I again inspected a cut on the north side of Jacobs lake. Also the sawdust put beneath the saw-mill, and a small, shallow shaft on the south side of the lake, and the claim in general. From Jacobs I proceeded with the party into House Rock Valley, leaving what I have heretofore termed the Buckskin Mountains. The first claim inspected was that at Two-mile, which we referred to as the Two-mile tract, the same being a lieu selection situated at a point about two miles north of the upper House Rock. This was in October, 1910, also.

This tract lies at the eastern edge of House Rock Valley in sand stone, the formation next about that heretofore mentioned on the Buckskin Mountains. Although geologically above the surface of Buckskin Mountains, topographically it is of lower elevation due to folding of the strata downward to the east of Buckskin Mountains. The claim is crossed by a small ravine or wash and its tributaries, and the claim covers a portion of the hills or cliffs which border this ravine. I visited the various tunnels, and a house and corrals and a pond which I found upon or adjacent to the tract. Near the northeast corner there is a tunnel caved [100] near the portal, and also at a point about one hundred fifty feet distant from the first tunnel was a second tunnel

(Deposition of W. L. Walker.)

about ten feet long with water standing in a pool on the floor of the same. A pipe was observed to run out from the first-mentioned tunnel also. I did not observe the length of the first tunnel; due to caving the entire length of this tunnel was not ascertained. I have not made a note of whether or not a pipe-line run out from the second tunnel—the one about ten feet long.

One of the houses on the claim was built of logs, board floor; dimensions 12x14 feet, and unoccupied. There was a stone house 16x32 feet; shingle roof; salt in the open east room of the house; the rest of the house was locked up. Over on the western edge of the tract there was a pond of water within a corral fence. The difference between this and the other ponds which I have heretofore mentioned arises from the fact that this is not in the nature of a depression such as the others, but that it is an artificially constructed pond fed by waters from the tunnels which I have described on the eastern edge of the tract.

The water from these tunnels was conducted to this artificial pond by pipe-lines. According to the description this tract was approximately 1320 feet square, being a forty-acre subdivision—an ordinary forty-acre lieu selection. These were the only developments I observed on this Two-mile tract. I might mention that I observed a small spring also on one of the branches, off to the east end of this tract. I did not mention it when I was describing the tract.

(Deposition of W. L. Walker.)

I do not recall whether it was developed in any way. I have simply mentioned it as a small spring. From the Two-mile tract I proceeded to the Noonday lode, this being the patented Noonday lode, situated at what is known as One-mile; this being to the south of the afore-mentioned Two-mile.

I might state that the terms One-mile and Two-mile referred to are place names. At this One-mile locality we ran a survey from the corner of the One-mile lieu selection tract over to the Noonday patented lode. [101] During the course of the examination we visited the land monument No. 5. This claim lies in a very rocky, rugged country on the face of the cliffs at the east side of House Rock Valley, and contains no land that could be described as agricultural land.

This description that I refer to applies to the Noonday lode. The formation is of sedimentary origin, the rock being sand stone of a reddish color. I visited Tunnel No. 1, so described by the official survey, and found the same to be constructed in red-sandstone, having three sets of timbers at the portal, lagged with cedar posts, the rest of the tunnel being untimbered, and it was partially filled through the last half of its length by caving material. Water was trickling into this tunnel from the pipe which pierced its roof or top and which led from Tunnel No. 2. Near the floor of this Tunnel No. 1, there was a vertical piece of perforated intake pipe through which water was flowing into a pipe-line which led down the hill towards the valley. There was

(Deposition of W. L. Walker.)

six inches of water in the bottom through a portion of this tunnel. I inspected the tunnel and saw no indication of mineral in rock in place. Tunnel No. 2 was found to be about fifteen or sixteen feet higher in elevation than Tunnel No. 1, and the portals of the two tunnels are only a short distance apart. This Tunnel No. 2 is excavated in horizontally bedded sandstone, the prevailing color being red. There was no vein or mineral matter exposed in this tunnel, and in the interior of the tunnel there was nothing to show any changed condition from the general country rock pierced by the tunnel; in fact there was nothing that invited even a sample. No mineral matter was to be seen.

Tunnel No. 1 was sixty-six feet in all, measuring from the outer end of the open cut. Tunnel No. 2 was forty-six feet with an 18-foot open cut. In Tunnel No. 2 I found a trickling of water entering the tunnel from near the roof at the center, and this water was being led to Tunnel No. 1 as I have mentioned, and from Tunnel No. 1 it was piped on down towards the valley. At this same time an inspection was made of the One-mile tract in lieu selection near by this Noonday lode. The conditions on it were in general similar to those on the lode, except that it was in the [102] valley and the surface was comparatively level, whereas the Noonday lode the surface was very rugged; and the surface and material on the lieu selection tract was in larger proportion soil, whereas on the lode claim solid rock in place prevailed.

(Deposition of W. L. Walker.)

I do not recall that I observed any water on the One-mile lieu tract.

The next claim examined was the Jacobs Pools tract at Jacobs Pools on the east edge of House Rock Valley several miles south of the last-mentioned One-mile tract.

The Noonday lode which I have already described was examined in October, 1910, and the Jacobs Pools was also examined in 1910. That is sometimes referred to as the Pools.

The country wherein this tract lies shows a formation of sandstone and softer clays of rather brownish red colors, and considerable water has been developed in this vicinity. There is a rather large reservoir here and pipe-lines leading down from the springs further up to the east. That is about all that can be said about this tract. It is very similar in general conditions to the One-mile tract and Two-mile tract. I do not know whether it was held as a lieu selection at that time. I could not be sure as to the character of title at that time. I observed some pipe-lines there leading to a reservoir. I didn't follow them up to see where they came from throughout all the distance.

I followed the pipe-line from some distance, but I do not recall now. I did follow it up towards the east and north, towards the springs of water. The next examination was that of the Sunset mill site, survey 2118-B. This was south from The Pools, and which is included in the patented Sunset lode.

(Deposition of W. L. Walker.)

The country included within this tract is rough and hilly, and through the central part of the tract there is a ravine, and in this ravine near the center of the claim is a shallow tunnel running a little ways up the bottom of the ravine, which develops water, and from the tunnel there was a pipe-line which led on down the gulch to join the line from the lieu tract which fed into the reservoir near the Pools. There was no [103] mill on this tract, and no evidence of occupancy for mining purposes or milling purposes. The work I noted consisted in the excavation of a tunnel, or rather a covered open cut in the bottom of the gulch, and the excavation of a cut along the side which would serve to divert the flood waters past the tunnel.

The next claim examination made was Sunset lode No. 2118-A. I made the inspection of this lode starting from a corner described 4—2118-A. This was on October 18, 1910.

I found this claim to lie is a sandstone formation and to cover a hilly country with some rather deep draws or gulleys. The sandstone formation is that which is so generally exposed at the east and north edges of House Rock Valley. On this claim the rocks were tilted to some extent. I visited the tunnel which was driven into the hillside in a general direction of north about twenty degrees east, and found that only the first six sets of timbers were standing. The rest knocked down and the tunnel was in a very badly caved condition. I went back to the face of the tunnel and made a very thorough

(Deposition of W. L. Walker.)

examination and found that the material was sandstone. There was a trickle of water springing out from the face of the tunnel. There was absolutely no sign of mineral in rock in place or in the float. There was some water trickling out from the mouth of the tunnel down over the dump. There was a pipe-line leading from the tunnel down the hill and down the gulch. The land office plot of the official survey was posted just inside the tunnel.

There was no indications whatever of mining being done or having been done at this time on the Sunset lode.

Comparing the formation on which this Sunset lode was located, and especially that in which the tunnel was driven on the Sunset lode, with the formation in which the Sunset mill site was located and in which the Sunset tunnel was driven, the formation is identically the same; all a part of the series of sandstones and minor amounts of shale, known in common terms as part of the Vermillion cliffs formation; the formation which makes up the Vermillion cliffs being very common throughout the [104] plateau region of the United States and traceable for a great distance along the outcrop with generally constant characteristics although there are local gradations. These claims the Sunset lode and mill site and the Noonday lode, and the Emmett lode which I will mention a little later, and the lieu selection tracts on the east side of House Rock Valley, are all in this same generally similar country and formation. There is no material difference between

(Deposition of W. L. Walker.)

the conditions on the various tracts, except such as involved in topography. One claim may be a little rougher than another and on one claim a little more rock may be exposed to view, while on another claim soil is apparent. There is no essential difference in these claims in this House Rock Country.

The next examination is that of the Emmett lode, made also in October, 1910. This claim was to the southeast from the Sunset lode. On this claim I found a tunnel which had been driven along the surface of a rather pronounced small flat. This tunnel had not gained more than a depth of probably twelve feet, although its length was in the neighborhood of one hundred twenty-five feet. I mention this because of the fact if driven for mining purposes it would be a very foolish procedure since no depth would be gained. This tunnel was caved at the time of the visit and it was simply no more than an open cut of the full length of the tunnel so clearly indicated by the caving at the surface. There was no evidence of the presence of any mineral in or rock in place on this claim; no evidence of any mining operations at that time or having been done prior to that time there. The formation was essentially that I have heretofore described as being sandstone, and no particular difference could be noted between this claim and the other mining claims, mill site and lieu selections that I have described before. [105]

There was some water on this claim. I could hear some water dripping in the tunnel, and saw pipe and

(Deposition of W. L. Walker.)

pipe trenches and the remains of an old water trough to which the pipe-line led. There were two or three there—three other small excavations, which had been made in this same flat I have mentioned, but they were all of somewhat smaller dimensions.

Q. Was their purpose, if any, apparent?

Counsel for Grand Canyon Cattle Company objected that the question calls for a conclusion of the witness, which objection was overruled, and said defendant excepted.

A. The development of water was the only thing indicated at all by any of this work. There was no mineral-bearing rock on this claim nor any of the other claims. It was all similar.

The testimony I have already given in this case covers fully the examination that I have made of all claims belonging to or claimed by B. F. Saunders on the occasion of the examination made by me in October, 1908 and October, 1910.

The surface of the Kaibab plateau is occupied by a formation known as the Kaibab limestone. The quartzite which I have mentioned on the several claims is a silicious phase of this limestone formation. Underlying the Kaibab limestone and extending very nearly to the level of the Colorado River, a few thousand feet lower, is a series of sedimentary beds, chiefly sandstone, limestone and shale. The stratigraphic position of this Kaibab limestone is that just below the red beds of the plateau region. These red beds have been found to contain traces of mineral, but in this section of the country have al-

(Deposition of W. L. Walker.)

most generally proven to be so slightly impregnated with mineral as to be of no economic importance. Some copper ore has been found in the Kaibab limestone on Kaibab plateau, but the conditions under which it occurs are such that its presence is to be determined by its exposure at the surface rather than by the following up of the formation from point to point; that is, wherever the mineral is present on this Kaibab limestone, its presence is readily ascertained by inspection or shallow prospecting. Aside from this, and the presence of some mineral several thousand feet lower in the geological column, the district is without evidence of mineral deposits.

[106]

I did not find any evidence of mineral on any of the claims, that were held under mineral application, in rock in place.

Referring to the Jacobs lode I observed a little copper stain on a very little loose rock on the dump at this cut.

I have testified that I made an examination of the rock in place in that cut and found no copper-stained rock there.

Q. How do you account for the presence of this copper stained rock that you saw near the cut?

Mr. TULLER.—Objected to as calling for the conclusion of the witness, and not an expert opinion.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

A. After a very careful examination of the rock in place, in the cut, and knowing the presence of

(Deposition of W. L. Walker.)

copper-bearing rock at a point a half mile or more to the west of Jacobs lake, the conclusion that arose in my mind was that very probably this copper-stained float which I noticed at the cut had been by some means or other probably dropped at this point, having had its origin in known mineral exposures that I have mentioned a half mile west of the Jacobs lode. This was also based on the fact that on the road running through Jacobs lode at another point I observed a small piece of similar copper-stained rock—a piece of float right on the surface of the road, which gave indications of having been dropped there either by man or from a wagon or some other method of conveyance, from its original site in a mineral deposit a half mile or more west of the Jacobs lode.

Mr. TULLER.—I move to strike out that answer as irrelevant, immaterial and a matter not of expert opinion.

Motion sustained, and counsel for the Government then and there excepted. [107]

WITNESS.—(Continuing:) It is possible that the copper-stained rock did come out of the cut on the Jacobs lode, but if so there was no possible evidence at the time of my examination of such fact, and the probability to my mind is that it did not come from that cut. However, even though it did, it would not affect the conclusions as to the mineral character of the land. Because of the fact that it is frequently the case that traces of mineral are found in the land that has no value whatever of

(Deposition of W. L. Walker.)

mineral purposes and that such traces are present under such conditions which do not warrant the expectation of developing valuable deposits by further work.

I said that even if this copper-stained rock that was found on the Jacobs lode had been found in place that there was not such an amount of copper in the rock that you saw there as would warrant an ordinary mining man in proceeding further to develop it, or to expend money in its development. In other words, even though this copper-bearing rock which I saw had been in place, it didn't constitute a condition which would justify the expectation of the development of a valuable mine, even though further work was done.

The Jacobs lode was the only place amongst all this examination by me, concerning which I have testified, where I saw this detached copper-stained rock. The formations found at the Jacobs lode were not such as are usually found where valuable copper deposits are found.

This occurrence of copper is an unusual one, being wholly unassociated with igneous rock, which is the more frequent association of copper ores. The copper of this vicinity is associated with sedimentary beds; its extent is along the bedding planes; there is no evidence of it carrying to depth, and its presence is not attributed to lateral infiltration. In other words, the conditions with reference to the formations found on the Jacobs lode are not those that are common to copper-bearing communities.

(Deposition of W. L. Walker.)

As to whether or not the identical horizon of the ore-bearing rock in the country to the west of Jacobs lake extends into Jacobs lode [108] itself, I cannot say in the absence of detailed instrumental measurements. It is possible that the said horizon does so occur, but if so it would be at the surface on the Jacobs lode, and if it were mineral-bearing that fact would undoubtedly be patent to casual observation, or would be very readily developed by a very limited amount of work. In other words, if that formation was on Jacobs lode and was mineral-bearing, there would be no difficulty at all in recognizing the fact. And I did not find it apparent in the course of my examination. I have spoken of quartzite having been found on some of these mineral claims which I examined.

Quartzite is not a valuable mineral in the ordinary sense. Quartzite is a hard, very silicious rock, and essentially an altered sandstone. It is sometimes spoken of in common terms as chert, and in general it is of no economic importance; although in some instances some economic use is made of it, it does not rank as an economic product. Under the conditions which it occurs on the Kaibab plateau it is by no means of economic value.

In the course of my examination I visited what is known as the discovery point on these different mineral claims that I examined. In no instance did I find mineral disclosed or exposes on any of the mineral claims, so-called, on any of the claims I examined.

(Deposition of W. L. Walker.)

From my examination of all of these mineral claims there was nothing disclosed to show that any mining ever had been done there, or that there was anything to warrant mining being done. There has been none aside from that I have mentioned regarding the excavation of tunnels and open cuts, but which I did not refer to as mining work. It is mining in the sense that it is an excavation in the ground, but in that sense only.

In the course of my examinations I took photographs of some of the places I visited. Some of the photographs that I took and some that were taken in my presence, are here. I have here before me eight photographs that I have selected as those taken by me on the occasion of my examination of these claims. [109]

The first one is one that I took in 1908 of Jacob lode country taken from a point near the south line of Jacob lode and looking northerly. It shows at the extreme left the Saunders cabin, and in the center Jacob lake with the corral standing just beyond the sawmill. At the right of the lake is shown a portion of the sawdust pile which I have before mentioned. To the right of this are cabins and stables which I have also mentioned before. In the distance is shown the wooded character of the Kaibab plateau. Just at the left of the sawmill is shown the blacksmith-shop.

This photograph was taken in October, 1908. The writing, both on the front and on the back of this photograph is my writing. The writing on the front

(Deposition of W. L. Walker.)

of the photograph is: "1351—M. E. 626, Phoenix series, Jacobs lode," and at the right-hand corner of the photograph on its face the word "over." On the back appears the following: "Looking northerly from point just south of south end line of Jacobs lode showing lake and buildings on the claim."

Mr. SHERIDAN.—We now offer this photograph in evidence. Photograph received in evidence, and marked "Government's Exhibit No. 15."

WITNESS. — (Continuing:) That photograph was taken in October when there was snow on the ground.

The next one was taken by me in October, 1908, standing at the southeast corner of the claim, otherwise known as corner No. 4, looking northwesterly across the claim. The Jacobs lode, showing in the foreground at the left the sawdust pile and several stacks of sawed lumber. In the central portion showing Jacobs lake, the surrounding corral and the smaller connecting corrals on the north side. At the left side of the picture over the sawdust pile is shown Saunders' cabin. In the distance is shown the wooded character of the Buckskin Mountain or Kaibab plateau. [110]

The face of the photograph bears in pen and ink writing the following: "A 1451 M. E. 626—Phoenix series, Jacobs lode," and in the right-hand lower corner the word "over." On the back appears the following: "From corner No. 4 looking north thirty-five degrees west, showing Jacobs lake, corrals, sawdust pile in the foreground; Saunders' cabin in the

(Deposition of W. L. Walker.)

background at the left of sawdust pile. Buckskin Mountains, Arizona, October, 1908."

Mr. SHERIDAN.—We offer this photograph in evidence.

Photograph received in evidence, and marked "Government's Exhibit No. 16."

WITNESS. — (Continuing:) The next one is a photograph taken by myself in October, 1908, standing just to the south of one of the shafts which was returned by the deputy surveyor as an improvement on the Jacobs lode. This picture shows Jacobs lake with the shaft in the center foreground; portions of the corral fences by the lake; Mr. Jensen standing at the left of the shaft; and in the distance the wooded rim of the depressions wherein Jacobs lake is situated. At the right-hand side of the picture and just left of the gate-post and standing out in the central portion of the lake, are shown posts horizontally capped, such as is generally used in the headframe for an old-fashioned well. This marks the site of the second shaft which was returned by the surveyor as an improvement for this lode.

This shaft in the immediate foreground to the center of this picture is one of those which was formerly described by me in my testimony.

It is not the one that was walled up with rock, and which I believe I testified had the appearance of a well, near the lake.

Q. Then please give us a little more information, if you can, as to what was the apparent true purpose of this excavation?

(Deposition of W. L. Walker.)

Mr. STEVENS.—We object to that on the ground it calls for a conclusion of the witness on a matter which does not call for expert testimony. [111]

Objection sustained, and counsel for the Government then and there excepted.

(A. This shaft stands in the basin portion of the lode very close to the edge of the lake. The only useful purpose that it appeared to have served was the possible one of use for well purposes. That is, standing close to the edge of the lake, the lake waters percolating into this excavation, might serve as better water for culinary purposes than the water of the lake which was used for the stock. However, so far as appearances showed the excavation might have been dug simply as an attempt to perform assessment work on the mining claim.)

WITNESS.—(Continuing:) There was no evidence of this excavation having entered rock. The material on the dump was of fragmental character, largely soil.

On the face of this photograph appears in pen and ink writing the following: "A 1451—M. E. 626—Phoenix series—Jacobs lode." In the lower right-hand corner the word "over" appears and on the back the following: "Caved shaft just north of saw-mill and outside of fences of lake. The other shaft is located at right of picture and covered by water."

Mr. SHERIDAN.—We offer this photograph in evidence.

Photograph received in evidence, marked "Government's Exhibit No. 17."

(Deposition of W. L. Walker.)

WITNESS.—(Continuing:) The next photograph is also one taken by myself in 1910. It shows in the center the lake at Mile-and-a-half which is included within the Alaska lode. Surrounding the lake is also shown the five-sided corral which I have before mentioned. At the left of the corral a little in front of the lake is shown a monument on the claim. Just over the right corner of the corral are shown the shallow pits or shafts which I have heretofore described. Just over the center of the lake is shown a cabin. In the background is shown the wooded character of the rim of the depression wherein this lake is situated. This displays the general wooded character of the surface. [112]

Mr. SHERIDAN.—We will now offer this photograph in evidence.

Photograph received in evidence, and marked "Government's Exhibit No. 18."

WITNESS.—(Continuing:) The next is a panoramic view taken in two separate pictures taken from near one of the corners of the Sunset mill site looking across the mill site and showing in the distance the red sandstone cliffs, which I have before described as bounding the eastern and northern edge of House Rock Valley. Two corners of the Sunset mill site are shown on these photos by Mr. Wheeler and Mr. Hoyt, whose positions are indicated by arrows in ink. In the central portion of the left-hand panel is shown the vicinity of the Jacobs Pools tract. Just beyond this is shown a portion of the flat or level portion of House Rock valley which extends off

(Deposition of W. L. Walker.)

to the left. The right-hand panel displays also in the background the cliffs of red sandstone. The principal points shown by the two pictures are the characteristics of the Sunset lode.

I said that in the left-hand panel is shown the vicinity of Jacobs Pools tract. I am unable to identify the exact position of this tract, but it is in that portion of the picture included within the dotted line. I have marked in ink on the right-hand panel the line of adjustment.

Mr. SHERIDAN.—I now offer these two photographs in evidence.

Photographs received in evidence, and marked "Government's Exhibit No. 19-A, and 19-B."

WITNESS.—(Continuing:) The next photograph that I took in October, 1910, the major portion of the lower half of this picture embraces a portion of the surface of the Sunset lode. In the background is shown the sandstone cliffs which I have before mentioned as lying at the northeastern edge of House Rock Valley. At the left of the center of the picture is shown a branch of the gulch on which is located the tunnel which I have before described.

Mr. SHERIDAN.—We now offer this photograph in evidence.

Photograph received in evidence, and marked "Government's Exhibit No. 20." [113]

WITNESS.—(Continuing:) The next is a picture I took in October, 1910, of the long tunnel or open cut I described on the Emmett lode. In the background is the lower portion of a steep, rocky

(Deposition of W. L. Walker.)

hillside, and to the right of the center standing on the surface of the flat I mentioned in my testimony, is Mr. Wheeler above the end of this tunneled open cut excavation. Vertically below Mr. Wheeler at a depth equal to twice his height is the floor of the open cut which is essentially the top of the timbers of the tunnel, which illustrates the fact that I mentioned in my testimony that only about twelve feet of depth was gained by the length of this tunnel. On either side of the cut is shown the soil and debris which has been thrown from the excavation.

Mr. SHERIDAN.—We offer this photograph in evidence.

Photograph received in evidence, and marked "Government's Exhibit No. 21."

WITNESS.—(Continuing:) All these I have described were photographs taken by me. I cannot say without checking up whether these are all that I took. But these were all that were taken by me that I now have in my possession.

(The witness then testified that he was familiar with the cost of tunneling such as was done on the claims he examined, and from his experience he was able to state and did state that the value of the work would not exceed \$2.50 per foot per lineal foot of tunnel work. The open cut rate being at a proportionally lower rate.)

(This testimony was excluded by the Court under the objection previously made as to evidence concerning the cost or the value of improvements.)

And to the ruling of the Court in refusing to ad-

(Deposition of W. L. Walker.)

mit this testimony, the Government, by its counsel, then and there excepted.

WITNESS.—(Continuing:) In the course of these investigations of the claim which I examined, which were held by Mr. Saunders, and concerning [114] which I have already testified, I took samples of the rock found on some of these claims and had some assays made.

Q. Have you with you any records from which you could give us the results of your assays? Now, I direct my question to rock in place on the claims under consideration.

Mr. TULLER.—Object to that as hearsay.

Objection sustained and counsel for the Government then and there excepted.

(A. Yes; I have an assay certificate showing the results of three samples taken from the Jacobs lode.)

Mr. SHERIDAN.—I now offer in evidence as Government's Exhibit No. 22, assay certificate of the Young Assay Office of Salt Lake City, Utah, bearing date December 9th, 1908, and signed by J. V. Sadler, showing the results of the assay of some rock found on the Jacobs lode.

Objected to as incompetent, irrelevant and immaterial, and hearsay.

Objection sustained, and the Government by its counsel then and there excepted.

WITNESS.—(Continuing:) The name W. L. Walker, appearing on this exhibit under the heading, "shipper," is myself. I presented these samples to the Young Assay Office for assaying, and this

(Deposition of W. L. Walker.)

is the certificate returned by the Young Assay Office, the result of that assay. There were three samples. I broke the rock off myself. On this exhibit, under the caption, "Copper per cent wet" there appears in each instance the word returned "trace." That means that whatever copper was present in these three samples was of such small amount the amount could not be determined in figures. That is, it was such a small fraction of one per cent to be practically negligible. It does not amount to anything.

All of the testimony hereinbefore set forth beginning as follows: "I presented these samples," was objected to on the same ground as the objection to the assay certificates.

Objection sustained, and counsel for the Government then and there excepted. [115]

On cross-examination by counsel for the Grand Canyon Cattle Company, the witness testified as follows:

I had no acquaintance with the territory about which I have been talking in my direct examination, except as I acquired it during my visits in 1908 and 1910.

Kaibab plateau is an elevated portion of the earth's crust situated in the north side of the Colorado River on the east side of *Knanb* creek and in northern Arizona, not far south of the Utah line. Its north-western edge is marked by a fault scarp; its southern side is marked by the Grand Canyon. Geologically, it is composed of sedimentary beds; in general horizontally bedded, though on the eastern side there is a monoclinical fold which depresses the rocks of the sur-

(Deposition of W. L. Walker.)

face towards the east. The surface of the Kaibab plateau consists of rolling hills and intervening shallow gulches whose characteristics are very similar from point to point. The plateau is rather generally covered with a stand of timber and with a growth of grasses suited to be used for stock raising purposes. The Kaibab plateau is also known as Buckskin Mountains. In general, it is rather poorly watered so far as running springs are concerned, although there are a few such springs. The plateau is reached by wagon-road leading south from a Utah settlement or by trails from the Grand Canyon. The surface of the plateau is something like 4,000 feet higher in elevation than the Colorado River.

Kaibab plateau is synonymous with Buckskin Mountain range. The two names are applied to this elevated table-land. Officially, and according to the maps of the geological survey it is Kaibab plateau.

The western boundary of this plateau is Kanab creek. On the survey maps I presume the boundary in reality would be a little east of Kanab creek, since a portion of the same elevated surface has also been named Powell's plateau. That is, Powell's plateau is really geographically a part of the Kaibab.

There has been at one time or another considerable mining activity on the Buckskin Mountain range at the point I mentioned west of Jacobs lake, one-half mile or a mile or more, considerable prospect work has been done in the mining line. [116]

The consideration which may govern an ordinary miner in determining upon the development of a

(Deposition of W. L. Walker.)

property cannot be stated by a hard and fast rule. He will reach his determination by, partly at least, considerations peculiar to his individual case; as, for example, his mining experience, personal enthusiasm, etc. All sorts of considerations may enter into his thoughts before or at the time of making any locations. In other words, in the case of a miner making mining locations a variety of considerations may enter into his mind, as in the case of anybody in any other walk of life making any decision.

Water is one of the natural elements that sometimes bothers in the furtherance of mining operations. I would hardly say it frequently intrudes and interrupts for the time being. It is an infrequent instance where there is a great intrud of water encountered in mining excavations that drives the men from these excavations; but I think it is infrequently rather than frequently that such is the case; it does occur.

On redirect examination by counsel for the Government, the witness testified as follows:

As I have stated in my direct examination, there was no evidence at the time of my inspection of any true mining work being carried on, or of any true mining work having been carried on, on any of these specific claims. I also testified regarding the excavation of certain cuts and tunnels on the ground which I stated are sometimes referred to as mining work merely from the fact that they are excavations in the earth. At no one of these cuts or tunnels, at the time of my inspection, were the waters which had been

(Deposition of W. L. Walker.)

developed present in such quantities as to afford any insurmountable obstacle to the carrying on of further excavation or mining development work, had such excavations been started for such purpose.

When I say these specific claims I mean all the mineral claims I examined as shown by my direct testimony, and which were claimed by Mr. Saunders. [117]

I refer to the claims which I testified about in my direct examination. I did not refer to the Petosky or Coconino mining property. Nor to anything I saw in that mining district.

When I examined the Saunders mineral locations or mining claims, I examined them for mineral in general, just as is commonly my practice in the examination of prospects or mining claims, or other claims, with reference to the presence of mineral. I did not limit my inspection or queries to any one, but had in mind minerals in general. I found no evidence of any minerals in any of these mining locations by Mr. Saunders other than a trace that I testified about and which is set out in a Government exhibit—namely, the Jacobs lode. That is all, referring to minerals of economic importance. I say economic importance, as I tried to show in my direct examination, from the standpoint of geology and mineralogy, the earth's crust is made up of a great number of substances which are termed mineral. For instance, the quartzite and sandstone, to which I refer, are composed largely of silica, which, mineralogically, is a mineral; also, this rock contains some iron, some oxygen, and

(Deposition of W. L. Walker.)

some calcium, and among other substances which, in that narrow, restricted sense are minerals, but they are not minerals from an economic standpoint or the standpoint of the miner. They are not such substances, as they exist in the locations referred to, as are recoverable at a profit or useful or marketable materials.

Q. Were the slight evidences of mineralization concerning which you have testified in your direct and re-direct examination such on the Saunders location as to warrant an ordinarily well-informed miner in Utah in expending his money in the development of these claims?

Counsel for Grand Canyon Cattle Company objected on the ground that the question calls for the conclusion of the witness and is not a matter of expert witness' opinion. It means something entirely different from a geologist or mineralogical expert such as this man is. It refers to a miner.

The objection was overruled, and said defendant excepted.

A. No, sir; they were not. I do not know whether I mentioned the Warm Springs mining district or not, but that is the district in the vicinity of some of these claims. I found some evidence of mining operations having been carried on at one time approximately a half a mile away from the Jacobs lode. That was in the vicinity of what has been referred to in this case as the Petosky and Coconino mining property. I didn't observe any mining [118] operations being conducted at the Petosky or Coconino

(Deposition of W. L. Walker.)

properties on the occasion of my visit to that part of the country, and I was up at these properties on both occasions. Considerable excavation work had been made in the surface beds on the top of the Kaibab plateau in those properties; principally open cut work, comparatively shallow, from which had been removed and associated copper minerals. I have no direct knowledge of any ores ever having been shipped out of the Coconino or Petosky properties although I understood that materials taken from those properties were taken as far as the mill or smelter, as what is known as the town of Ryan, which is just at the base of the plateau, but I don't know of any ores having been shipped from the district. The mill or smelter at the town of Ryan was more distant from the mineral locations held or claimed by Mr. Saunders than the Petosky and Coconino mining claims. The Petosky and Coconino claims lie between this smelter and the Jacobs lode. I do not know whether the mill or smelter handled ore from any of the other properties than the Petosky and Coconino properties. I have seen this mill or smelter. It was not working at the time I saw it.

The detached copper stains that I observed at the Jacobs lode was similar to that that I observed at the Petosky and Coconino properties. The gangue was of similar material and the staining was the same copper mineral—that is, of carbonate of copper. When I refer to certain copper stained rock having been observed by me near the Jacobs lake, that rock was the same as the copper stained rock that I saw

(Deposition of W. L. Walker.)

on the Petosky and Coconino properties. I didn't see this material scattered along the road; I just saw in this particular instance that I mention a single piece or two. But its character was the same as that on the Petosky. I saw no such rock as I saw on the Petosky and Coconino properties beyond one or two pieces I saw at the Jacobs lode or any of the other mineral claims held by Mr. Saunders.

(Two photographs shown witness.) Both of those were taken by me, one in 1908 and one in 1910. The one taken in 1908 is a picture [119] I took showing the Saunders cabin and stables on the Jacobs lode claim. In the right center of the picture is shown the cabin; in the left center is shown the stables. Between the two I have dotted a line showing the approximate position of the side line of the claim. The person standing in the foreground of this photograph in the right-hand lower corner is Mr. Joseph Jensen, who has testified in this case.

This photograph on its face contains the following in pen and ink writing: "A 1451 M. E. 626, Phoenix Series, Jacobs Lode," and in the lower left-hand corner the word, "Over," and on the back in pen and ink writing the following: "Saunders cabin and barn. West side line of Jacobs lode indicated by dotted line."

Mr. SHERIDAN.—We offer this photograph in evidence.

Photograph received in evidence and marked "Government's Exhibit No. 25."

(Deposition of W. L. Walker.)

WITNESS.—(Continuing:) The second one is a print of a photograph which I took in October, 1910, at Franks Lode looking in a northeasterly direction and showing in the foreground at the right of the cabin I mentioned in my testimony, and in the left center showing a portion of Frank's lake. This picture also shows the corral fence which surrounds the lake, and just beyond the lake, between the lake and the fence, is shown a rock monument. In the distance is shown a portion of the rim of this basin wherein this lake or pond is situated.

This photograph is mounted on a cardboard on the face of which appears the following legend in print: "U. S. Department of Agriculture, Forest Service." There is on the back of this photograph a printed form which is in blank.

Mr. SHERIDAN.—We now offer this photograph in evidence.

Photograph received in evidence and marked "Government's Exhibit No. 26."

WITNESS.—(Continuing:) The Warm Springs Mining District is in the vicinity of these Saunders claims concerning which I have testified. I don't know the limits of the Warm Springs mining district, or whether the Saunders claims are in them. That is just a miner's term following the requirements of the land laws with reference to the surveys of mineral claims, so I presume these claims [120] might be spoken of as being in the Warm Springs mining district. I am pretty familiar with mining districts in Utah from my experience there both in geological survey

(Deposition of W. L. Walker.)

and general land office. The Warm Springs mining district has never ranked as a producer. The developments at the Petosky and Coconino claims are known to mining men in that State, but it's never referred to as district of importance at all.

Deposition of Joseph Jensen, for the Government.

Counsel for the Government next offered and read in evidence the deposition of JOSEPH JENSEN, who testified as follows:

My name is Joseph Jensen, and I live in San Francisco; my office address is 512 Custom-house. I am mineral inspector of the General Land Office, appointed in 1908, and have served in that capacity continuously except for a leave of absence covering from June, 1910, to May, 1913. I was in active service as mineral inspector of the General Land Office from the time of my appointment in 1908 until June, 1910, and since May, 1913. The technical title I hold is surveyor for the inspection of mineral deposits. Our duties are to see that mineral claimants under the United States laws have complied with those features of the law relative to mineral character. We make field examinations to determine such features. The examinations are not confined to the mineral character of the land. We examine everything that would have any bearing on mineral claims and likewise as to State selections; everything connected therewith. During the years 1908 and 1909 and until June, 1910, I carried on my work as mineral inspector in the States of Utah, Wyoming, Arizona and Idaho. With the exception of Wyoming, where there are

(Deposition of Joseph Jensen.)

other issues involved my work was determining the validity and compliance of the law of mineral claimants, and whether the lands were mineral in character. In connection with Mr. W. L. Walker I made fully examination of the Jacobs lode, claimed by B. F. Saunders, in what is known as the Buckskin Mountain or Kaibab country. That was by the direction of my official superior. I am the Mr. Jensen to whom Mr. Walker referred in his testimony as accompanying him on that occasion. That was in 1908; I was not [121] with him in 1910. On the occasion of my investigation in company with Mr. Walker of the Jacobs lode in 1908 I made notes of the examination.

The Jacobs lode covers a portion of the Kaibab plateau, or the Buckskin Mountains as it is locally known in southern Utah and northern Arizona. Most of the trees that once grew upon the claim have been felled, but there are a few trees standing. The claim lies in a north south direction and has been so located as to cover a depression in the plateau. At the time of our visit there had been a snow storm, but before we left the claim all the snow had evaporated or melted on the ground, so that some of the pictures indicate that there was a covering of snow; but the fact is we were able to see all parts of the claim when the snow had disappeared. In going over the claim we found the various corners going to them in the order of 4, 3, 2, and 1—the various corners of the claim, and thus identifying it and also retracing the lines. In the center of the basin only an alluvial deposit is to be found, but around the rim

(Deposition of Joseph Jensen.)

and at higher portions on the claim outcrops of quartzite are found. We inspected all natural outcrops of quartzite on the claim, looking particularly for evidences of copper staining or other mineral values, but in no case did we find any natural exposures of copper-bearing or other mineral-bearing rock on the claim. We made a careful inspection of improvement number one, which was returned by the deputy mineral surveyor as a trench or open cut in earth and rock. A good portion of this trench is in surface soil, but rock in place is exposed. Though we inspected the open cut very thoroughly, we failed to find even so much as a copper staining in any of the rock. We attempted to inspect Shaft Number 2, but owing to the fact that this is located in a pool of water we were unable to do anything more than run a line to the edge of the pool. We saw a portion of the edge of the dump of this shaft, but the earth on the same was of a loose residual nature with scattering of small stones. This was the last material which came from the bottom of the shaft. We retraced the line to Shaft No. 3, and at the point described by the deputy mineral surveyor failed to find the same, but continuing on we found an improvement which would correspond to the improvement which was given by the deputy mineral surveyor. This was [122] the shaft which has been cribbed with slabs. The dump showed more earth than anything else, but there were a few small earth-stained rock fragments on the dump.

A sort of brown rock. When rock has been lying in the earth it has a different appearance than rock

(Deposition of Joseph Jensen.)

that has been excavated by blasting operations. We also inspected the cut made on the sawmill. Beneath the sawmill a pit had been made in which rock in place was exposed. We brushed the surface of the rock off very carefully, but failed to find any evidence of mineralization whatsoever, although we were particularly careful to look for copper staining since the claim lies on the edge of a copper mining district known as the Warm Springs mining district. There were a few pieces of copper-stained float on the claim, but the same kind of float was also noted on the road-way leading to the claim from Warm Springs canyon and House Rock spring. The pieces of copper-stained rock that I noticed on the road was what I call float. Except the distinction that float is simply by definition detached mineral rock irrespective of the manner in which it became detached. You would call this float. Most of the rock that we found was of a different nature than that which has been detached in a different way. In other words, it presented evidences of having been artificially detached from its original formation; it was fragmentary. It was not in place. There was no evidence on the claim of active mining operations nor of sustained operations.

The open cut was in a little knoll near the center of the claim, but so far as having significance as a piece of mining work it merely represented excavation, which, from surface indications appeared to have no mining value beyond that characteristic of annual assessment work. We found the center of the depression occupied by Jacobs lode. The lake was enclosed

(Deposition of Joseph Jensen.)

with a substantial heavy pole fence, making a good corral. In one corner of this large corral there was a smaller corral, and adjoining the large corral there were five pounds and a runway. All of [123] these improvements showed evidence of use of a very substantial nature. Though we saw no cattle in the corrals there was ample evidence that the same had been occupied by stock. On the claim we found a sawmill, blacksmith-shop, and a large pile of sawdust. These three things are just at the edge of the lake, and were so located that the water of the lake could readily be used in the boiler connected with the sawmill. There was also sawed timber located on the claim. Near the south line of the claim there were two barns and three cabins. We stopped two nights in one of these cabins. This cabin had two rooms and a kitchen. Papers found in a writing desk indicated that a family named Brown had been living there, and we confirmed this by talking to Mr. Brown in Kanab later on. The other two of these three cabins are located just off the claim. On the eastern edge of the claim and looking down upon the lake we found a log cabin and identified it as Mr. Saunders' by the official plat returned by the deputy mineral surveyor, John T. Breckon. There was also a dugout on the claim. Despite these many evidences of occupancy there was nothing about any of the improvements or any of the cabins which indicated that they had been used for mining purposes. There was no evidence of occupancy by mining men or miners; there were no mining tools there. There was no evidence on the

(Deposition of Joseph Jensen.)

Jacobs lode of mining ever having been done there other than the cuts that I have described. And these cuts appeared to have no consistent relation to any actual mining operations on the claim.

We also inspected some of the mining development work which had been done in the district something like one-half mile or a mile west of the claim and found the deposit there was blanket formation, by which I mean horizontal formation. The formation exposed on the claim is also horizontal, so that any benefit which might inure to the claim because of its location at the edge of a mining district must be weighed in this connection. This copper deposit is not one which might be developed with depth.

The deposit is one which will lie horizontally and consequently if exposed will extend horizontally from the line of exposure to the limits of the claim, so far as the claimant is concerned. [124] There was no indication found on the claim that this deposit to the west had extended this distance to this claim. Especially in the open cut there was no evidence of vertical fissuring of such a nature that it could be called, with a very liberal interpretation, a lode or being in place. This open cut is at the discovery point of the Jacobs lode.

I observed on the Jacobs lode copper-stained rock not in place, and as I mentioned before, it was different from anything that I observed in place in the open cut.

I could account for some of the rock on the claim

(Deposition of Joseph Jensen.)

because when I visited the mining district I put some rock in my pocket and carried it there myself. On leaving we had too much to take with us and I simply left it there. But after that we saw some rock on the roadway leading to the claim. Some copper-stained rock of the same character, which would be significant as suggesting a conclusion as to how the fragmental rock on the claim got there.

I found no copper-stained rock in place anywhere on that claim. I did find there, other than the pieces that I took there in my pocket from a distant point outside of the claim, some copper-stained rock lying on the claim.

I took one picture of Mr. Walker standing in the open cut. I have that picture with me and I produce it. This photograph bears in pen and ink writing on its face the following: "Jacobs lode—A 1451—M. E. 626, Phoenix Series," and in the lower left-hand corner the word "over." On the back of the photograph appears the following: "Cut No. 1 at north side of Jacobs Lake." Mr. Walker wrote those legends on the back and face of this photograph. That is Mr. Walker standing in the open cut.

I prepared a map as a result of the investigation I made of the Jacobs lode, and I have that map with me. (Witness produces map.) That is the map on which appears the legend "Jacobs lode, Warm Springs mining district, Coconino County, Arizona; survey No. 1923; patent No. 42246; sketch one inch equals 200 feet," and bears the name of Joseph Jen-

(Deposition of Joseph Jensen.)

sen in the lower right-hand corner; also appearing in typewriting in the upper left-hand corner, "W. L. W. M. E. 626, Phoenix A 1451." That [125] map was prepared from field-notes made on the ground and much of the matter given on the map was sketched in my note book on the ground, and then drawn on to this map on my return to field headquarters.

At the time of my appointment as mineral inspector I held the degree of Bachelor of Science of Mining Engineering from the State School of Mines of the University of Utah. I was assistant engineer and geologist at the Bamberger Delamar gold mines of Delamar, Nevada. I have visited and spent some time in most of the mining districts in Utah, and previous to my appointment I spent two years in reporting for the "Salt Lake Tribune," and a portion of that time I was mining editor for that paper. I spent one year in the Royal School of Mines at Freiberg, Saxony. I also spent one year at the Columbia University, and secured the degree of Master of Arts for work done in the department of geology and mining. I visited mineral producing sections in Austria, Germany, Belgium, England, Scotland and Wales, and in New Jersey, Pennsylvania, Utah, Nevada, California and New York. Part of this was prior to my appointment as mineral inspector and part of it during my leave of absence. [126]

Deposition of Edgar L. Clarke, for the Government.

Counsel for the Government next offered and read in evidence the deposition of EDGAR L. CLARKE, who testified as follows:

My name is Edgar L. Clarke, and I reside at Parowan, Utah. I am sixty-five years old and my occupation is livestock and farming. I knew B. F. Saunders, one of the defendants in this case. I would say that the first time I met him was about 1885. I was related to him in business transaction for a considerable time, but not dating back to that particular period. I had some dealings with him in the way of purchasing blooded cattle for him, and I think in January, 1888, he employed me to assist him in buying cattle and sheep for future delivery. I continued to be so employed by Mr. Saunders for considerable of the time for a period of about twenty-three years from 1888. During my employment by Mr. Saunders I was required to visit what is known as the Buckskin Mountain ranch. I received and assisted in the branding of some cattle to put on that ranch. I also assisted in locating some of the claims on that ranch—on the Buckskin Mountain ranch and House Rock Valley for Saunders and Haley, as I understood it. I bought some cattle and arranged for them to be delivered on the Buckskin Mountain ranch, also bought horses from parties that had them running in that section of the country and arranged for their delivery and for shipping them. I assisted the deputy mineral surveyor, Mr. Horn, in the location of some of the

(Deposition of Edgar L. Clarke.)

claims. Some were located as scrip and some as mining claims. I think it was in August, 1900, that I commenced to assist in the location of claims for Saunders and Haley on the Buckskin Mountain ranch. I recall one of the claims which was located by me—the Bessie Horn. As I remember that was located as a mining claim. The Bessie Horn mining claim was along the main road of Jacobs lake and the F. T. Park on the Buckskin Mountain, and as near as I can remember it would be approximately two-thirds of the way from the former to the latter place. I merely assisted in placing the stakes and fixing the corners. It must have been under Mr. Saunders' direction. As a general thing any work that I did [127] on the Buckskin Mountain ranch while claimed by Saunders and Haley was done under the direction or at the instance of Mr. Saunders. With this explanation, that I may have decided things on the Buckskin Mountain and acted on behalf of Mr. Saunders and Mr. Haley, without their knowledge of exactly what I was doing, for they would be in Wyoming and Salt Lake City, and perhaps there might be something come up that I couldn't get their instructions on. I received general instructions from Mr. Saunders, and if any unforeseen details arose that might be attended to *me* me within those instructions, I attended to that myself.

Q. *No*, directing your attention especially to this Bessie Horn mining claim, what was it that caused Mr. Saunders to have a mining claim made

(Deposition of Edgar L. Clarke.)

on that piece of ground?

Mr. TULLER.—Object to that as calling for the conclusion of the witness, irrelevant, incompetent and immaterial.

Objection sustained, and counsel for the Government then and there excepted.

(A. To secure a watering place for livestock.)

WITNESS.—(Continuing:) I assisted in the location of a number of other claims, but cannot now recall their names.

Q. And was it Mr. Saunders' purpose in locating those claims to secure water for stock-watering purposes?

Mr. TULLER.—Same objection.

Objection sustained, and counsel for the Government then and there excepted.

(A. Yes, sir.)

WITNESS.—(Continuing:) Those claims which I assisted in locating were located for Mr. Saunders.

My employment by Mr. Saunders commenced as nearly as I can recall about 1888 and continued approximately up to the time of his death [128] in 1909. I don't mean to say that I was constantly employed by him, but from time to time from 1888 to the time of his death. I was intimately associated with Mr. Saunders during that time, and knew him well not only in a business way, but as a friend. The partnership relation between Mr. Saunders and Mr. Haley occurred in the fall of 1896, as I remember, and covered the Buckskin Mountain ranch as well as

(Deposition of Edgar L. Clarke.)

other things. I assisted in the survey of those claims on the Buckskin Mountain ranch I think in 1900, and including the time necessary to go from my home and return, as I remember, it would be twenty-four days. My home at that time was in Parowan, Iron County, Utah. It is possible that the time to go from my home to Kanab was not included, and I might have been there instead of home when I received instructions from Mr. Saunders to go to the Buckskin Mountain. I don't know whether I had any written instructions as to assisting in locating these claims. Sometimes he gave me his instructions verbally, and sometimes in writing.

I visited the Buckskin Mountain ranch after the occasion when I assisted in the location of a number of claims a considerable number of times before the sale was made by Saunders and Haley to the Grand Canyon Cattle Company, but I do not recall the dates. I went to inspect the condition of the ranch and the cattle on some of the occasions, and to make purchases, if possible, from any one whom I found claiming watering places or ranches upon this section of the country. That was under Mr. Saunders' instructions to me and I did make some purchases for Mr. Saunders. Mr. Saunders was the dominant factor on the Buckskin Mountain. Mr. Haley lived at Laramie, Wyoming.

I know a man named Charles Dimmick. I first became acquainted with him, probably in 1892. I think at that time he was employed by Mr. Saunders or soon after the time I first met him. This is the

(Deposition of Edgar L. Clarke.)

same Charles Dimmick who was subsequently foreman of the Buckskin Mountain ranch. I do not know what power or authority he has as foreman or superintendent of the ranch. I am not positive as to when he became foreman, but I am under the impression it was in 1901 or 1902. He continued as foreman for a [129] considerable time, possibly he didn't become foreman until 1903. There was another man foreman during the period of time, named Ben Majors. As I remember it Mr. Dimmick continued as foreman from the time of his appointment to the sale to the Grand Canyon Cattle Company.

One of the claims that I purchased under Mr. Saunders' direction from other persons claiming title to certain tracts of land down in the Buckskin Mountain country was later covered by scrip or mining claim. In each instance where *there small* tracts they covered water. I recall purchasing a claim known as the Emmett claim, a watering place held by a party by the name of James S. Emmett. The claim was held by Mr. Emmett at the time I purchased it as a discoverer or locator of the watering place where some improvement work had been done to develop water. I understand it was later located with scrip, but I am not sure as to that. As I remember, I purchased East Pool from him, but I do not remember the form of claim by which it was subsequently held by Mr. Saunders. I don't remember a mineral claim covering a watering place for stock on the Buckskin Mountain ranch known as

(Deposition of Edgar L. Clarke.)

the Emmett lode. I kept no data whatever so far as I remember in regard to these locations, but left it entirely with the surveyor to make his report to Mr. Saunders, and I take it for granted that that is the reason why I am unable to remember the names of these places, etc.

On the occasion of these visits to the Buckskin Mountain ranch I recall that I noticed the piping of water from the watering places on that ranch. I noticed it as early as 1900, but I do not know of my own knowledge who put that piping in there. My observation went to the extent of informing myself that water was carried away for stock-watering purposes, and it was used for that purpose so far as I observed. It was used on the Buckskin Mountain ranch and the House Rock Valley so far as I observed for the watering of livestock only. [130]

The claims that I purchased from other parties for Mr. Saunders were not held by scrip locations as I know. Some of them were held in the form of water claims, and to some degree *of* artificially developed in some instances. My reference to scrip would be after they were purchased from these parties.

I have no correspondence between myself and Mr. Saunders or Saunders and Haley concerning my work done on the Buckskin Mountain ranch. I have made diligent search for such papers. I have shown to counsel for the respective parties certain papers relating to the estate of B. F. Saunders, deceased, which I believe are part of the official records of the court in the matter of the disposition of his estate.

(Deposition of Edgar L. Clarke.)

I was executor of the estate of B. F. Saunders. These are the only papers which I have been able to find after a careful search. I don't know anything of the whereabouts of any yearly reports made by Charles Dimmick to B. F. Saunders at the direction of Mr. Saunders while Mr. Dimmick was foreman on the Buckskin Mountain ranch. So far as I know I have never seen them.

Mr. SHERIDAN.—The balance of the testimony of this witness related to the matter of notice, and we desire to keep that for that occasion. [131]

Deposition of John T. Breckon, for the Government.

Counsel for the Government then offered and read in evidence the deposition of JOHN T. BRECKON, who testified as follows:

My name is John T. Breckon, and I reside at Vancouver, British Columbia. I have been a resident of British Columbia about thirteen years. Before coming to British Columbia I resided at Salt Lake City, Utah, for approximately twenty years. My profession while there was civil and mining engineer, and I am similarly engaged at British Columbia.

While I was engaged in the practice of my profession at Salt Lake City, Utah, I became acquainted with Mr. B. F. Saunders. I first met him just after I went to Salt Lake City in 1898. I met him socially. The first business relations I had with Mr. Saunders was about 1904 or 1905. He got an order for the survey of mining claims in Arizona. I was deputy mineral surveyor for Idaho and Arizona, but I don't remember when I first received that appoint-

(Deposition of John T. Breckon.)

ment, probably two or three years before I was employed by Mr. Saunders to survey some mining claims. It was between 1900 and 1902 that I received my commission as deputy mineral surveyor. Before the work I did for Mr. Saunders I carried on a general mining and engineering surveying practice in Utah and Arizona. My work brought me into the same part of the country that Mr. Saunders had me do work for him. I had surveyed some claims for the Coconino Copper Company, I think, in 1904, which were near the claims of Mr. Saunders. I had other surveying work in that vicinity for the Petosky Mining Company. Close to one of the claims now in suit, the Jacobs lode.

I did no other surveying than the two instances prior to my employment by Mr. Saunders in that vicinity. I had never been in that country before doing the surveying work for these companies.

As near as I can remember, it was in 1904 and 1905 that I commenced work as surveyor in the capacity as deputy mineral surveyor for Mr. Saunders. I have no correspondence with Mr. Saunders. We always [132] met in his office at Salt Lake City and he told me what he wanted done. His office in Salt Lake City was at his residence on North Temple, and he gave me his instructions there. As nearly as I can recollect, the first work Mr. Saunders gave me to do as deputy mineral surveyor was locating some land scrip. I cannot remember where. I located four or five forty-acre pieces. I also located a pipe-line for him. That was before the survey of

(Deposition of John T. Breckon.)

these four mineral claims, the Jacobs lode, the Sunset lode and Sunset mill site, the Noonday lode, and the Emmett lode; that pipe-line was south of the Kane Springs ranch-house. It was built to get the water down the canyon over the rocks and cliffs into the open for the cattle.

Q. Now, I wish you to give your attention first to the Jacobs lode, and in order to aid you in refreshing your memory I will now hand you a document and ask you to state if you recognize it, and if so, what it is. Do you recognize that as a photographic copy of the original papers in the Jacobs lode?

A. Yes, it appears to be a copy.

Mr. SHERIDAN.—We now offer the certified copy of the Jacobs lode in evidence.

Certified copy received in evidence and marked "Government's Exhibit 1."

Q. Mr. Breckon, according to the Government's Exhibit 1, the Jacobs lode was located October 21, 1901. The survey of it was commenced March 12th, 1904, and was completed March 12th, 1904. Now, will you give us, in your own words, as nearly as you can recall, what occurred prior to the survey of this claim between you and Mr. Saunders with reference to the making of this survey? [133]

A. Mr. Saunders called me to his residence in Salt Lake City and said he had some mining claims to survey down in Coconino in House Rock Valley, and he asked me what was necessary to do to get an order for survey. I told him to get his location notices and I had some blanks in the office I would let him

(Deposition of John T. Breckon.)

have, and he could fill them in and send to the Surveyor General in Arizona who would issue the order to make the survey. He did so.

WITNESS.—(Continuing:.) I don't believe he said anything about the mineral character of the claim. He said that Dimmick, the foreman, would show me where the claims were. He told me where I would find Dimmick. I had been there before. I was there before for Mr. Saunders on the scrip locations. None of these scrip locations were placed on the same land covered by the Jacobs lode, nor were they in the vicinity of them. When I say I had been down there before, I mean I had been down to the Saunders ranch in Coconino County, Arizona, in the House Rock Valley on the east side of the Buckskin Mountains.

I made a preliminary survey of the Jacobs lode prior to this formal survey that I made under Mr. Saunders' direction. That was probably a year or so before I went to Saunders. The preliminary survey was made about a year before the survey that is indicated on the Government Exhibit 1, but it was not made for Mr. Saunders. I believe it was made for the Coconino Copper Company. It was just a location survey 800 by 1,500 feet. At the time of this preliminary survey there was a pond of water on the ground covered by this claim, and old sawmill and a small hole for discovery with some copper rock, and a small dump.

The pond of water was about 300 feet in diameter, and covered about an acre or two, as near as I can

(Deposition of John T. Breckon.)

remember. There were no streams running into it or out of it. It just seemed to be a natural depression of a body of water. There were some buildings there, I believe two houses, I don't remember exactly, and there was an old sawmill. There [134] was no one living there. I believe the houses were dwelling houses. The old sawmill was not running at the time, and I didn't pay any *any* attention to its condition. I think it had been used a short time before, but I didn't go in it. I didn't see any people there, and I don't remember seeing any stock about the place, and couldn't say about any fences about the spring or house.

I spoke of a discovery for a preliminary survey which was made for the Coconino Copper Company. There was a small rock monument with a location notice and open cut about four feet wide and four or five feet long and two feet deep that was there at the time I went there, but I don't know who placed it there. The open cut was north of the pool of water a few hundred feet. There was some copper-stained rock there, but I didn't look to see whether or not it came from the rock in place in that cut. I didn't pay any attention to it. I noticed a small heap of copper-stained rock right by the side of the cut I have referred to thrown out to one side of the cut, but I can say nothing as to where that copper-stained rock came from. I didn't notice any copper-stained rock in place in the cut.

When I subsequently made the survey for Mr. Saunders of the Jacobs lode, as shown in Govern-

(Deposition of John T. Breckon.)

ment's Exhibit No. 1, there was a change in conditions there. The cut was longer and there was a corral built at the north end of the spring, just a cattle corral. I don't remember how large the corral was. I don't remember whether there was a fence about the spring at that time. I think the same buildings were there that I observed on the preliminary survey. There were no people there at the time. I don't remember whether there was any stock there.

The extension of that cut was not made by, and I don't know who extended it. I observed the same pile of copper-stained rock there in the same place when I surveyed the Jacobs lode for Mr. Saunders. I measured this cut to see how much work had been done, and estimated the value. I don't remember whether that in the course of measuring it on [135] that occasion of finding any of this copper-stained rock in the cut. I cannot say that I examined it any further than I had before. I saw the copper-stained rock on the dump. I saw the size of the dump and estimated the cost of the work. I made no inspection there on the occasion of the preliminary survey or the occasion of the survey of this Jacobs lode for Mr. Saunders as shown in Government's Exhibit No. 1, with a view to determine whether there was copper rock in place in this opening.

On the occasion of this preliminary survey I had some men with me who were working for the Coconino Copper Company, but I cannot remember their names. The survey I made for the Coconino Copper Company covered the same ground that was covered

(Deposition of John T. Breckon.)

by the Jacobs lode. When I made the survey of the Jacobs lode at Mr. Saunders' direction Mr. Saunders made no reference to the manner in which that survey should be made as to what ground it should cover or otherwise. When I made the patent survey I made it according to the location. I located the patent post. I went according to the location that was already on this land. The preliminary survey covered all of this pool of water, and that survey for Mr. Saunders, as shown in Government's Exhibit also took it all in.

That preliminary survey had nothing to do with the Saunders Jacobs lode. I knew when I went down there where I was to place this survey for Mr. Saunders by Mr. Saunders' location stakes. I saw these stakes at the time of the preliminary survey for the Coconino Copper Company. At the time of my conversation with Mr. Saunders in Salt Lake City he told me that the Jacobs lode was at Jacobs lake, and he wanted me to make the survey at the Jacobs lode, as it had been placed there before by him. On the occasion of that survey I don't remember whether anybody else was with me. I cannot tell whether Charles Dimmick was with me. He was with me part of the time of the survey, whether he was there all the time I don't know.

An employee of Coconino Copper Company showed me the place. I came within one thousand feet of it. [136]

Q. Now, will you give us, in your own way, just

(Deposition of John T. Breckon.)

how it was that you computed the value of the development work done on this claim?

Objected to as incompetent, irrelevant and immaterial, and within the ruling of the Court as to the cost of the work.

Objection sustained, and the counsel for the Government then and there excepted.

(A. The open cut was the one mentioned before at the discovery and was estimated in the usual way. A tunnel in hard rock is estimated from \$10 to \$12 per foot, and an open cut is estimated according to the depth of it.)

WITNESS—(Continuing:) The shaft that was partly covered by water—partly filled with water from the lake was on the west side of the lake was in the lake and covered over with high water when I saw it. On the occasion of this survey there was water in it. I cannot say the depth. I ascertained the dimensions of that shaft only by the timbers that were sticking up above the ground at the top of the shaft. Some square timber with boards to keep the dirt from running in, something like the ordinary uprights above a well. The upright timbers above the boxing consisted of irregular ends of timbers to which boards were nailed.

Referring to the shaft in Government's Exhibit No. 2, "A shaft 4"x6' and 22' deep in earth; well timbered, we measured that shaft with a stick; a man I had with me and myself measured it. We didn't go down in the shaft, it was not more than 22 feet deep. It was not more than half of that.

(Deposition of John T. Breckon.)

Mr. Saunders and Mr. Dimmick gave me the depth of the shaft. We could run a stick down into the shaft. As regards the depth, as stated in these notes, I relied on what Mr. Dimmick and Mr. Saunders said of the depth. As to being well timbered all the way down when I examined it it was timbered on top. There was a firm backing on top of *of* the up-rights where the box was nailed. There were two shafts. The one I have just described is the one that was filled up with water. [137]

I made a return of the other shaft; it is given as No. 3 in Government's Exhibit No. 1, "A shaft 4x6 feet and 16 feet deep in earth, well timbered." I cannot tell you relatively where that shaft No. 3 was located unless I have a plat. I think the shallow one, the one fourteen feet deep was close to the lake. I don't remember whether there was any super-structure on this fourteen-foot shaft. There was some timber, but whether it stuck up above the ground I don't remember. I believe both shafts had water in them at the time I made the survey. In other words, they were both inside of the rim of the pool.

I have been engaged in mining engineering as well as surveying for a period of twenty years. I made the survey down there for the Coconino Company and the Petosky Company, and have made surveys for several big mines in the United States—The Annie Laurie Mining Company, the Mammoth and Grand Central Mining Companies. Those are in Utah, and are well known properties there. I had

(Deposition of John T. Breckon.)

connection with these properties, worked on them prior to the time of making these surveys for Mr. Saunders. I don't, in the performance of such work, take any particular interest in the geology of the country or observe it.

I noticed that the copper rock of the Buckskin Mountain was bedded, sedimentary formation; that it didn't lie in veins or lodes as is usual in mining districts. With reference to this particular claim the Jacobs lode, I didn't notice all the mineral at all. I don't think most of the claim was covered by water in this particular instance, about a couple of acres was at the time I saw it. I noticed the open cut, but I didn't make a detailed inspection. I noticed it for the purpose of measuring it. The rock I saw there was porphyry. I wasn't present when the work on the Jacobs lode was made.

Q. What did you have to guide you as to the expense of making that open cut? [138]

Mr. TULLER.—I object to that under the general ruling.

Objection sustained, and counsel for the Government then and there excepted.

(The witness testified that his return as to the cost per foot was not based upon his personal knowledge as to the cost of making the cut, but on the amount of the work that had been done, and his estimate of the value of it was what Mr. Dimmick or Mr. Saunders may have told him; that he estimated the cost of the two shafts by the kind of dirt that had been taken out; that he estimated the deeper

(Deposition of John T. Breckon.)

shaft by taking the depth that Mr. Dimmick gave him. All of which testimony was excluded under the ruling of the Court.)

(A certain copy of the records of the General Land Office in the Sunset lode and Sunset mill site were shown the witness.)

A. I believe that is the abstract.

Mr. SHERIDAN.—I now offer the certified copy of the records of the General Land Office covering the Sunset lode and Sunset mill site in evidence.

Copy received in evidence and marked "Government's Exhibit No. 2."

WITNESS.—(Continuing:) With reference to the Sunset lode and Sunset mill site, Mr. Saunders got the blank applications and sent them to the surveyor-general who issued the orders to me. When I got them I went to Mr. Saunders and told him I had the orders for survey. We arranged to go down there, so I did. He said Mr. Dimmick knew where the corners were and would show me the claims. Mr. Saunders went down with me once. I don't remember which claims were surveyed at that time. I know once we were down there in February, but I cannot tell you what year. We were making some surveys, but I don't remember which. He sent me up on top of the mountains to make some locations south of Jacobs lake. As near as I can remember Mr. Saunders was locating this scrip when he was there. That was, I think, in 1904, but I don't recall the part of the year. My best recollection is that it was in February Mr. Saunders was down there. I cannot remember whether I made a pre-

(Deposition of John T. Breckon.)

liminary survey [139] of the Sunset lode and Sunset mill site—I think I did of the Sunset lode. As near as I can remember I think we located the scrip before I surveyed the Sunset lode and Sunset mill site. I think we had a pipe-line running from Sunset Spring, and I ran that up. I think I located the pipe-line and made a preliminary survey of the Sunset. The location of the scrip and the location of the pipe-line were some time before the survey of the Sunset lode and mill site, but I don't remember how long. On the occasion of the survey of the land covered by the scrip and pipe-line to which I have referred, the scrip was located south of the mining claims and there was a pipe-line from the mining claims to where the scrip was located. The name of the place where the scrip was located was Jacobs Pools Corral.

The map to which I refer, and which was produced by me personally for this hearing, shows a pipe-line running from the Sunset mill site to the Jacobs Pools Springs and then from there to Jacobs Pools Corral, or ranch. That is correct. This map was prepared by me about 1905. After I completed the surveys for Mr. Saunders on my return from Salt Lake this was made on inspection that I made and the description of the pipe-lines.

Mr. SHERIDAN.—We now offer that map in evidence.

Map received in evidence and marked "Government's Exhibit No. 3."

WITNESS.—(Continuing:) I made four trips for Mr. Saunders down there, and this map was

(Deposition of John T. Breckon.)

made from the notes on each of those trips. The earliest trip was some time prior to the survey of the Sunset lode and Sunset mill site, and the last trip I made down there was to survey the Sunset mill site and the Sunset lode. This tracing is based on the information that I acquired on the four trips. I wish to correct that statement—the last trip I made down there was a year or two after that. I went down and surveyed the boundaries of the Grand Canyon Forest Reserve, and that made three trips for Mr. Saunders, and the fourth trip to survey the Forest Reserve, but not for Mr. Saunders. The map is [140] based on data I gathered on three trips for Mr. Saunders. The last one when the Sunset lode and mill site were surveyed.

In the center of Government's Exhibit 3 appears an area marked as Township 38 north, Range 4 east, and within the area appears a square marked "Jacobs Pools Springs," and a smaller area adjoining marked "Sunset mill site." The small line leading from the Jacobs Pools Spring to the Sunset mill site and running down to Jacobs Pool ranch indicates the pipe-line.

There also appears within that same area of the same exhibit a small square marked "Emmett lode," from which there runs a line marked "pipe-line" ending on the point opposite the area described as Township 38 north, Range 4 east, bearing the legend "tank." That is the pipe-line running from the Emmett lode to a tank. I think that was a wooden tank used as a watering trough for stock.

(Deposition of John T. Breckon.)

In the same exhibit No. 3, there is a square with the legend "Jacobs Pool Corral," and a line marked "pipe-line" running between Jacobs Pools Corral and Jacobs Pools ranch. That pipe-line was to carry water down to the Jacobs Pools Corral from the Jacobs Pools ranch. In the upper left-hand corner of the same exhibit there is a small square marked "Noonday lode spring," and another square marked "One Mile Spring" and still lower down a square marked "House Rock Valley," and a line connecting all three and running to the square marked "House Rock Corral." That line indicates a pipe-line to carry water down to House Rock Corral for stock and domestic purposes. In the lower left-hand corner of the same exhibit is a square marked "Kane lode"; also a square marked "Kane mill site" and a square marked "Kane Corral," all connected with a line. That line also connects a pipe-line for the purpose of carrying water for domestic purposes and for stock. [141]

All the pipe-lines that show on this exhibit were surveyed at the time the scrip was located, and I believe all the scrip was located before the surveys were made for the Sunset mill site and the Sunset lode. I cannot say whether the surveys of the pipe-lines and the scrip were all made prior to the making surveys of the four claims in issue in this suit, namely: The Sunset lode and mill site, the Emmett lode, the Noonday lode, and the Jacobs lode. I think the scrip was located at two different times. The pipe-line at the Kane corral was surveyed at the time the scrip was put on there. It was the first scrip

(Deposition of John T. Breckon.)

located. I don't remember now what other pieces were located at that same time. At the time the Jacobs pool corral and the Jacobs pool ranch was located that pipe-line was surveyed, the pipe-line was in at that time. The same at House Rock corral. I believe that pipe-line was surveyed at the same time the scrip was located on House Rock Corral.

This exhibit—Government's Exhibit No. 3, does not show all the pipe-lines that I surveyed for Mr. Saunders. There was one other. (Witness produces a blue-print.) The original of that map was prepared by me, I believe was filed by me with the General Land Office. I made it for filing, and this blue-print was prepared under my supervision. The survey was made on the 12th day of September, 1903, and that is shown both on the surveyor's certificate and in the applicant's certificate, as they appear on this exhibit.

Mr. SHERIDAN.—The Government will now offer in evidence this blue-print produced by the witness and which bears the legend "B. F. Saunders" pipe-line and reservoir on the Grand Canyon Forest Reserve, Coconino County, Arizona."

Blue-print received in evidence and marked "Government's Exhibit No. 4." [142]

WITNESS.—(Continuing:) The small map in the right-hand lower corner of this exhibit, is what is called a key map. That is a map on a smaller scale, so that the location with regard to some prominent object can be shown. The purpose of this

(Deposition of John T. Breckon.)

map was to show the location of the pipe-line to carry water down into the valley to a tank or reservoir for watering stock. The general body of this map shows the route of the pipe-line from the canyon to the tank. This was made for Mr. Saunders after I made the survey. He wanted to use the water for watering stock. The tank indicated in the upper right-hand corner of this exhibit 4 from the nearest of the four patented claims now in suit is about thirty miles to the Sunset lode, nearly south, but it's on the north side of the canyon. I don't know that the land on which this land was located was held under any form of application at the time the form was made. The area marked on this exhibit "Reservoir 150,000 gallons," was for the purpose of catching the overflow from the tank at the end of the pipe-line. The tank I refer to now in speaking of this reservoir is the one at the bottom of the map or reservoir or the sketch marked "reservoir," and is an enlarged scale of that shown at the end of the pipe-line. So that area to which I have just now referred marked "reservoir" and the small adjoining area marked "tank" is merely an enlargement of the tank and reservoir shown at the end of the pipe-line. In the upper right-hand corner of Government's Exhibit No. 4, and the sketches on the left-hand lower corner showing the side and end views of the tank are the details of the details of the tank referred to in my testimony concerning this exhibit. I have a blue-print of the patent survey of the Emmett lode and Noonday lode, the Sunset lode and mill site. I have a plat of the Jacobs Pools

(Deposition of John T. Breckon.)

corral, scrip location, and also a blue-print of Kane Springs scrip location.

Mr. SHERIDAN.—We now offer the blue-print of the Emmett lode just furnished by Mr. Breckon in evidence. This is the same Emmett lode not in issue in this suit, the survey number being 2141.

Blue-print received in evidence and marked Government's Exhibit No. 5. [143]

Mr. SHERIDAN.—We also offer in evidence the blue-print map produced by the witness showing the survey of the Noonday, survey No. 2140, being the same Noonday lode now in issue in this suit.

Blue-print received in evidence and marked Government's Exhibit No. 6.

Mr. SHERIDAN.—We also offer in evidence the blue-print of survey No. 2118, A and B being the Sunset lode and Sunset mill site now in issue in this suit.

Blue-print received in evidence and marked Government's Exhibit No. 7.

Mr. SHERIDAN.—We also offer in evidence the blue-print of the survey of the forty-acre tract known as the Jacobs pool tract.

Blue-print received in evidence and marked Government's Exhibit No. 8.

Mr. SHERIDAN.—We also offer in evidence the blue-print showing the forty-acre tract known as the Kane Springs tract.

Blue-print received in evidence and marked Government's Exhibit No. 9.

WITNESS.—(Continuing:) With reference to the condition of the land embraced within the Sun-

(Deposition of John T. Breckon.)

set lode and mill site when I first visited them, as regards the character of the ground and the improvements, as near as I can remember, the claims laid near the foot of the sandstone bluffs—just a broken country. I believe there is a spring of water on both the lode and mill site. The springs had been developed—that is, cleaned out, and opened up. There is a tunnel on the lode claim 4x6 feet and 90 feet long in sandstone; an open cut on the mill site 6 feet deep and 10 feet wide and 50 feet long in earth and loose rock. I believe I went into the tunnel on the lode. The first part of the tunnel was timbered, it was in sandstone. There was a small stream of water [144] in the tunnel which was running out of the tunnel. I believe it ran out of the tunnel or was conducted into a trough. I cannot now remember by what means it was conducted to this trough, but by a wooden trough or pipe; it was not by a ditch. The trough was a cattle trough. It was right at the mouth of the tunnel I believe. I didn't observe the character of the formation of the tunnel. I referred to it as sandstone bluff, but I cannot tell what color of sandstone it was, because there is a red sandstone and a gray sandstone both there, and I cannot remember whether that work was in red or gray. I don't believe I went back in the tunnel, I sent a man in with a long tape line. I simply measured the size and the length of the tunnel to get the value. I made no report on the mineral character of the land in which the tunnel was placed and didn't observe anything as regards to the mineral.

(Deposition of John T. Breckon.)

I cannot say whether I saw any mineral lying there outside of the tunnel.

Q. Of course I realize, Mr. Breckon, it was a fairly good time ago, and these details may be indistinct now, but from your testimony I gather that you observed that the tunnel, as far as you observed at that time had been used for the development of water. Is that correct?

Objected to as incompetent, irrelevant, immaterial and calling for a conclusion of the witness.

Objection sustained, and counsel for the Government then and there excepted.

A. They were using it, taking water out.

Q. Did you see anything in that vicinity in this tunnel to show that mining had been carried on there as mining business rather than for the development of water?

Defendant objected on the ground that the question called for a conclusion of the witness and was incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. No; no mining there. There was no mining there; there were no other improvements than this trough or pipe-line that conducted the water to the trough for cattle at this lode that I observed. The lode was approximaely 2200 feet from the Sunset mill site. The mill site is located nearer the sandstone bluff than the lode claim, and near the Jacobs Pools Spring. The character of the rock at the mill-site [145] was the same as that at the Sunset lode, where exposed. I believe the ground is not so

(Deposition of John T. Breckon.)

broken on the mill site as on the lode, but in other respects the rock formation appeared to be of the same nature. There was an open cut on the mill site as shown in Government's Exhibit No. 2. I believe there was water in the open cut. I don't remember that there were any improvements for the purpose of developing water, just some water in the open cut, a small stream running out of the cut.

I don't think there was any pipe in the tunnel on the Sunset lode, but it began near the mouth of the tunnel. They got the water near the mouth of the tunnel.

The testimony I have been giving about the Sunset lode and Sunset mill site refers to the occasion when I made the patent survey of that. I think I made a preliminary survey of the Sunset lode at a prior time. I cannot recall whether I did of the mill site, but I probably did at the same time. I made the preliminary survey at the Sunset lode at the request of Mr. Saunders. They were already located and staked. I had nothing to do with the locating. Mr. Dimmick was with me when I made this preliminary survey of the lode which I think was in the middle of the summer of 1904. We had two other men with us, but I don't remember who they were. My son was with me at either the patent survey or the preliminary, I don't remember which. The other persons there were employees of Saunders. They were persons as near as I recall under Mr. Dimmick's direction as foreman for Mr. Saunders.

At the time I made the preliminary survey of the

(Deposition of John T. Breckon.)

lode claim, I surveyed a pipe-line from the lode claim to the Jacobs Spring. I think there was a pipe-line also to the Jacobs pool corral. The pipe-line to the Sunset mill site is just a short distance. It wasn't hardly a survey, just a straight line. I think the mill site was at a lower elevation than the lode. I cannot recall whether the pipe-line was surveyed from the mill site at that time as well as the lode, I think I did. I believe it was at that time that a pipe-line was surveyed from the mill site. [146]

Q. Now, give us the manner in which you computed the amounts of money expended in development work on the Sunset lode?

Objected to under the general ruling as to the value of improvements.

Objection sustained, and counsel for the Government then and there excepted.

(The witness then testified that the usual allowance in sandstone rock was from eight to ten dollars per foot for tunneling; that it would cost more down in that country on account of the distance from supplies.)

WITNESS.—(Continuing:) I don't know who it was that performed that tunnel work. I am satisfied it was done under Mr. Dimmick. Ranch riders are not usually miners and they would have to get miners to do the drilling. They might use the ranch hands for handling the dirt, as muckers. I was acquainted with Dimmick at that time, and he was not experienced in matters of that kind at that time. I don't know whether Mr. Dimmick or any of his force

(Deposition of John T. Breckon.)

was qualified to carry on this mining work.

On this Sunset lode at what was designated in Government's Exhibit No. 2, as discovery point—there was simply a stake set in a pile of the rock; that rock was simply country rock piled up. I didn't notice any mineral there. I don't recall whether a person by the name of H. B. Young accompanied me on the occasion of the survey of the patent of the Sunset lode. The matter of the party accompanying me was attended to by Mr. Dimmick. I went to see Mr. Dimmick at the direction of Mr. Saunders. In each instance, with reference to the Jacobs lode, and with reference to the Sunset mill site I received my instructions from Mr. Saunders at Salt Lake City, and I then proceeded to Mr. Saunders' ranch and received my instructions or directions from Mr. Dimmick. He furnished me with men and all I needed by way of transportation and supplies. All the expenses I was put to incident to all these surveys were paid by Mr. Saunders. [147]

There was a stone house on the scrip location at the Jacobs pools ranch, as indicated in Government's Exhibit No. 3. As near as I can remember that was just a stone house probably sixteen by twenty-four feet, with shingle roof used as a camp house I believe. There was no one there when I was there. On the occasion that I was there we stopped there to eat. I don't remember whether we went in the house or not. The house appeared to be used for the men to cook and sleep in. I believe it was on Saunders' property and was used by the men on his

(Deposition of John T. Breckon.)

ranch. I don't remember whether there was anything stored in the cabin. We took a cold lunch with us when we stopped there and I don't remember whether we went into the house or sat outside by the tank. There was tank there near this house, a small tank probably a hundred-foot square, an earth bank or pool. I believe there was a pipe leading into that tank coming from Jacobs Pool Spring and that constituted another watering place for stock.

I don't believe I drew any of the papers for Mr. Saunders on any of these claims. If I did write any location notices or drew any of these location notices, in every case that I did that and signed another party's name I also signed my own name by "J. T. Breckon." If the record shows any with my name on, then I drew them.

(Witness shown certified copy of the records of the General Land Office relating to the Noonday lode.)

WITNESS.—(Continuing:) I believe that is a copy of the abstract.

Mr. SHERIDAN.—We now offer in evidence certified copy of the official record of the General Land Office relating to the Noonday lode.

Certified copy received in evidence and marked Government's Exhibit No. 10.

WITNESS.—(Continuing:) On the occasion of making this survey Mr. Dimmick was with me for one. Government's Exhibit 10 shows that my son Leroy Breckon was there. In each case where he accompanied me to make surveys he went with me from Salt Lake City. [148]

(Deposition of John T. Breckon.)

In the case of the Jacobs lode and in the case of the Sunset mill site and the Sunset lode, I personally made the survey of each one of these claims myself for patent by going on the ground, making examinations and then making my returns.

Q. Now, will you please tell us the manner in which you computed the amount expended for improvement on the Noonday lode?

Objected to on the same ground already made to evidence of value of cost of work.

Objection sustained, and counsel for the Government then and excepted.

(The witness then testified that he made the estimate of the cost of the work by indicating the dimensions of the tunnel, seeing the character of the work and making an estimate of the cost; also from information from Mr. Dimmick as to what the actual cost was, and that such cost included only the development on the ground and did not include pipelines.)

WITNESS.—(Continuing:.) I didn't make a preliminary survey of the Noonday lode; I recollect that fact clearly, because the claim is located on the crest of the sandstone bluff. It is impossible of assent, and I could remember that if I had made another survey before the patent survey. When I made this survey for patent of the Noonday lode I observed development work and improvements at that time. There was a tunnel four-by-six and forty-five feet long; also a tunnel four-by-six and twenty-five feet long that was there at the time I made the survey.

(Deposition of John T. Breckon.)

That is all the work done on the claim. I don't know when it was made. I don't know when any of the improvements or development work that I found on the Jacobs lode, Sunset lode and Sunset mill site were made.

I believe there was water in each of the tunnels on the Noonday lode. It was piped to House Rock Corral at the time I made the survey on this claim. I don't remember whether the pipe ran into a trough or a receptacle to store water, but at the House Rock Corral there was [149] drinking troughs for the stock. The formation of the Noonday lode was of the same general character as the Sunset—sandstone. The Sunset lode and mill site was about in an easterly direction from the Jacobs lode. I think about twenty or twenty-five miles. The Noonday lode was about ten miles northwesterly from the Sunset lode, and about ten or twelve miles from the Jacobs lode in an easterly direction. I didn't notice any other improvements or development on the Noonday lode than those I have testified to. There were no buildings or structures there other than the buildings and pipe-line than I have spoken of. I didn't see any mining carried on about the Noonday lode when I was there. These three claims and mill site so far described by me were in the Warm Springs mining district. I don't know when that district was established. I ascertained it was in the Warm Springs mining location by the location notice placed there by Mr. Saunders' people.

(Witness shown certified copy of the records of

(Deposition of John T. Breckon.)

the General Land Office with relation to the Emmett lode.)

The WITNESS.—I believe that is a copy of the abstract.

Mr. SHERIDAN.—We now offer in evidence the certified copy of the official records of the General Land Office relating to the Emmett lode.

Copy received in evidence, marked "Government's Exhibit No. 11."

WITNESS.—(Continuing:) I don't remember whether I made a preliminary survey of the Emmett lode. At the time I made the survey for patent of the Emmett lode there was a tunnel on that lode, I believe about fifty feet. The dimensions were four by six, and it was partly timbered. I went into that tunnel myself and measured it up all the way back. There was water in that tunnel, but I don't remember how it was handled. It ran out of the tunnel, but I don't remember whether there was a pool outside of the tunnel or not, or whether there was a pipeline leading out of the tunnel. It seems to me there was a drinking trough near the mouth of the tunnel at that time; that trough appeared to be in use at the time I was there. The development work I saw on this claim at the time I surveyed it was a tunnel four-by-six feet and fifty feet in length. [150] I know there was not enough work done to get a patent on at that time, and I refused to return it until there was more work done. The tunnel was in sandstone rock, the same formation as on the Sunset lode. I did not go back into the tunnel myself. The for-

(Deposition of John T. Breckon.)

mation was of the same kind of sandstone as on the three claims concerning which I have already testified. I believe it was solid sandstone back to the face. The work in the tunnel appeared to have been just done when I was there. It was in good repair. I would like to make an addition to my statement, and that is at the time I made this survey there was one tunnel that was caved in at the mouth and at this time I cannot place it here or say which of the claims it was on. I believe it was one of the tunnels on the Sunset lode. I don't remember any improvements about the Emmett lode other than the tunnel and drift I have testified to. There were no houses or other structures of any size on the ground there. There was no mineral stored outside of the tunnel or in the tunnel. The Emmett lode is easterly from the Jacobs lode twenty or twenty-five miles and about a quarter of a mile from the Sunset lode and about a half a mile or a mile from the Sunset mill site, and about ten miles southeast from the Noon-day lode. At the time I made the survey of that claim Mr. Dimmick and my son were with me.

I believe there was a pipe-line on the Emmett lode at that time, but I have no recollection of it, aside from refreshing my recollection from Government's Exhibit No. 3. I now remember running a pipe-line out to the tank and seeing that tank there, but at what time I don't know. It must have been the time I made the last trip down there. The pipe-line surveyed from the Emmett lode was made by me during the survey for patent; that day; I know it

(Deposition of John T. Breckon.)

was prior to the patent survey or at the same time.

(The witness then testified as to the cost of the improvements on the Emmett lode as being eight or nine dollars per foot; that subsequently additional work was done as reported by Mr. Saunders to the extent of twenty-five feet, and on his report of the performance of additional work which the witness did not see or examine, he made the return that the requisite amount of work had been done and the report of the additional work was made to him by Mr. Saunders, at Salt Lake City, orally. [151] This testimony was objected to under the objection previously made. Objection was sustained, and counsel for the Government then and there excepted.)

WITNESS.—(Continuing:) I made just one visit to the Sunset mill site when I surveyed it for patent. Some water had been developed on that mill site as I have testified. I didn't see any mineral stored on that mill site or any structures there other than I have testified to. I don't recollect as to whether there was a pipe-line leading from the mill site to some other place. The only way I have of telling that is from the Government's Exhibit No. 3, which shows a pipe-line from the Sunset mill site to the Jacobs Pools Spring. The mill site is of a greater elevation than the Jacobs Pools Spring. I don't remember whether at the time I surveyed the mill site that pipe-line was conducting water from the millsite.

I recall having been interviewed by Mr. W. L. Walker, mineral inspector of the General Land Of-

(Deposition of John T. Breckon.)

fice, on April 11, 1913, and I recall executing an affidavit before Mr. Walker.

(Counsel hands paper to witness.) That is the affidavit I made, I believe. At the time I made this affidavit Mr. Walker disclosed the fact that he was acting as mineral inspector of the General Land Office. Each page of this affidavit bears my signature. Having read the affidavit I recall that the statements made in the affidavit are correct. At the time I made the affidavit I had all my note-books and records before me. At this time I have nothing but the official plats and records. I now desire to state that the affidavit shows more in detail and with a better degree of recollection what the situation was then than I now recall at this time.[152]

Counsel for the Government then offered in evidence the affidavit of John T. Breckon, referred to in the foregoing examination.

Objected to as incompetent, irrelevant and immaterial. Objection sustained, and counsel for the Government then and there excepted.

Affidavit marked "Government's Exhibit No. 12."

WITNESS.—(Continuing:) I surveyed lands in the same part of the country for Mr. Saunders with a view of placing scrip thereon. Government's Exhibit No. 3 shows all of these scrip surveys made by me at Mr. Saunders' request. The one nearest the northeast corner of the map marked "One-mile Spring" and the one adjoining that marked "House Rock" and the one in Township 38 north, Range 4 east, marked "Jacobs Pool Spring" were the only

(Deposition of John T. Breckon.)

scrip locations that had springs on them. The others had water on them, carried by pipes. The water was piped from the springs outside the tracts. The names of these tracts where the water had been piped from the place outside of the tract were the House Rock Corral, Jacobs Pools ranch, Jacobs Pools Corral, Kane Corral. The places where the water was piped to these tracks are indicated as well as the pipe-lines connecting them on Government's Exhibit 3. I don't remember of surveying any scrip location for Mr. Saunders other than those shown on Government's Exhibit No. 3, in the same part of the country where the patented claims now in issue were located. I made some surveys on the Buckskin Mountains, about twenty miles west of the Kane Springs, but whether it was for scrip or not I cannot tell. That was at Mr. Saunders' request, I think, in 1905.

Referring to Government's Exhibit No. 4, I think there were no scrip locations surveyed by me at Mr. Saunders' request anywhere within the area covered by this map. As near as I can remember I have testified concerning all the surveys that I made at Mr. Saunders' request for scrip locations north of the Grand Canyon in Arizona. I made a survey [153] for Mr. Saunders in the vicinity known as the Three Lakes, either in 1904 or 1905, but I don't recall what that survey was made for. I remember distinctly the Three Lakes, and I believe they were included within the boundaries of the survey. That survey was made at the direction of Mr. Saunders, the same as those other surveys.

(Deposition of John T. Breckon:)

I surveyed a tract known as Middle and South Lake for Mr. Saunders; that covered some water also. I cannot say what form of location he made on that. I went on the Buckskin Mountain from the Kane ranch when I was down there one trip. Mr. Saunders was there, he came up after we had finished the survey and met us and drove us toward Salt Lake. At that time I had three men and he had given me some location notices to make some preliminary surveys, but whether there was any scrip included in that I do not remember. I think my son was with me at the time of making the surveys of Three Lakes and South Lake. Mr. Dimmick was not there. Mr. Saunders came up just as we finished. We went through the mountains to Coconino instead of going back to House Rock Valley, just continued towards Salt Lake.

I do not know when the North Lake tract was surveyed. The form of location notices that were given me at the time I was directed to make the surveys by Mr. Saunders were lode locations.

I think that what is known as Three Lakes is a different and separate group of three pools or lakes from what is known as the Middle, South and North Lakes. I made three to six surveys about that time. It took three days. They were all separate as I remember, but they were all made at Mr. Saunders' direction and for him. The area included in each survey, if it was scrip work, was forty acres. Mining claims would be twenty acres. I don't remember surveying either the Soap Creek tract or the

(Deposition of John T. Breckon.)

Canaan Reservoir tract for Mr. Saunders. Two-mile tract and One-mile tract were surveyed by me for scrip locations. The tracts known as the Two-mile tract and One-mile tract are just a short distance from the Noonday lode, about a half a mile or a quarter of a mile, I should say, to One-mile tract, I don't remember about the Two-mile tract. There [154] is a House Rock tract that may have been called Two-mile tract, but it's not near the Canyon. The Two-mile canyon is one mile from One-mile canyon. My recollection is distinct that One-mile tract is about a quarter of a mile from the Noonday lode.

I surveyed the House Rock tract and the Jacobs Pools for Mr. Saunders. They were surveyed for scrip.

As a matter of fact all the locations that I testified to, both the patented claims now in issue and the ones which I cannot recall whether they were scrip or mineral holdings were in pretty much the same country as regards rock formation. These three patented tracts were more broken and had more rock on them than the scrip tracts. The scrip tracts were out in the open and valley lands. In every instance the scrip tracts had water within the boundaries of the survey.

I think I surveyed a mineral location for Mr. Saunders known as the Snipe lode. It was at the time I made the other surveys on top of the mountain. I think in February, 1904, or 1905, I recall making a survey for the Snipe lode and making a survey for the Crane lode at the same time; also the

(Deposition of John T. Breckon.)

Noonday lode, unpatented; also the Alaska lode and mill site; also the Frank lode, and also the Kane lode which I surveyed for patent. I believe these were all the preliminary surveys except the survey I made of the Kane, which was for patent.

Counsel for the Government here states that these surveys were made at the following dates: Snipe lode survey, February 17th, 1904; Crane lode, February 18th, 1904; Noonday lode, unpatented, February 18th, 1904; Frank lode, February 18th, 1904; Alaska lode and mill site, February 19, 1904.

WITNESS.—(Continuing:) I think all these lodes covered either springs or pools. These surveys were made at the direction of Mr. Saunders and *my and* two or three other men were there assisting me. I am not sure whether Mr. Dimmick was among them, I think he was. The men, other than my son, were employees of Mr. Saunders. [155]

I don't remember any developments or improvements on the Snipe lode or Crane lode at the time I made the survey. I don't think there was any work on any of these lodes. When I say "any" I mean the Snipe, Crane, unpatented, the Noonday unpatented, the Frank and the Alaska lode and mill site. On the Kane lode I think there were two tunnels, I don't recall whether there was water in the tunnels themselves, but I think there was water in the tunnels and near the boundaries of the claim. There was also water on the other claims, namely: the Snipe, the Crane lode, the Noonday lode unpat-

(Deposition of John T. Breckon.)

ented, the Frank lode, Alaska lode and Alaska mill site.

When I surveyed the Kane lode for patent there was a pipe-line from the Kane lode to the Kane corral. That is shown on Government's Exhibit No. 3. When I say on the Kane lode, I mean every one of the tunnels on the Kane lode. On the other lodes just mentioned with the exception of the Kane lode there was no tunnel work or cuts or anything like that. I cannot recall which one that was. They all had water on them.

There was also a mill site in connection with my survey of the Kane lode; that mill site also had water on it, and had a short pipe-line that connected with the line that ran from Kane lode. The pipe that conducted the water to the Kane corral and there it was troughed for stock uses and for the house.

I remember surveying the tract upon which the Kane corral was located; that was taken up by scrip. It was a forty-acre tract, surveyed also at the direction of Mr. Saunders and in company with Mr. Dimmick.

I knew Mr. Saunders about ten or twelve years before I made the surveys and knew him up to the time of his death. During all that time his business was stock dealer in Utah, Arizona and Idaho. I met Mr. Ora Haley, one of the defendants, at Mr. Saunders' house once. I believe after the surveys were made. Mr. Haley just came into Mr. Saunders' office as I was going out and Mr. Saunders gave me an introduction to him. I had no conversation

(Deposition of John T. Breckon.)

with him about these claims. Just a short talk. I went on and he went on talking to Saunders. That was the only [156] that I ever saw him.

Mr. Saunders died four or five years ago.

Mr. Saunders introduced Mr. Haley to me as his partner. I remember then the checks Mr. Saunders had been giving me were signed Saunders & Haley.

On cross-examination by counsel for the Grand Canyon Cattle Company, the witness testified:

I am a mining engineer and surveyor. I knew Mr. Saunders ten or twelve years before I had business relations with him regarding these surveys to which I have testified. I cannot say that I was acquainted with his business standing. Only he had a good reputation. He was known as a man of integrity and probity in business affairs.

The country down there on the side and at the foot of the Buckskin Mountains and all that territory in the Buckskin Mountains is all sandstone. The Buckskin Mountains are mineral. The character of mineral is copper; not much of anything else. I made no report as to the mineral features of any of these claims; it was not my business to. I didn't get any instructions as to the survey from Mr. Dimmick. He went along and showed me the locations. I had no negotiations in the sense of instructions governing my employment there from Mr. Dimmick.

On redirect examination by counsel for the Government, the witness testified:

I never saw any mining of copper or any other mineral going on at any time upon the claims now in

(Deposition of John T. Breckon.)

issue—the Jacobs lode, the Sunset lode, the Noonday lode patented, and the Emmett lode. I had no personal knowledge of any ore ever having been shipped from the four lodes just mentioned. There might have been ore shipped without my knowing it. I never made any assays of ore or alleged ore taken from the four claims just mentioned. It was not my business to make such assays.

The WITNESS.—I wish now to state that when I was questioned regarding the open cut on the Jacobs lode I called the character of the [157] rock porphyry, I should have said sandstone, as I now remember that all the country rock is sandstone, and all reference as to the cost of working the rock on the Jacobs lode referred to sandstone.

Deposition of William Black, for the Government.

Counsel for the Government next offered and read in evidence the deposition of WILLIAM BLACK, who testified as follows:

My name is William Black; my residence is No. 34 I Street, Salt Lake City, Utah; I am the manager of R. H. Officer & Company, assayers and chemists. I have been connected with R. H. Officer & Company about fourteen years. About six months as furnace man and eight years as manager. During my employment there R. H. Officer was connected with the firm the first six years. Mr. Officer is now dead. He died, I think, in 1905. During the time of Mr. Officer's life and after my first employment there he was the proprietor of the R. H. Officer Company, I began to sign certificates of assay for the R. H.

(Deposition of William Black.)

Officer & Company in May of some certain year. I rather think Mr. Officer died in December, 1905, and that his brother had charge until May, and then after that I signed nearly every certificate. I will have to look that up, but say May, 1906. Prior to that time I hadn't regularly signed certificates of assay issued by R. H. Officer Company, nor had I signed them to any material extent. Prior to that they had been signed by F. H. Officer and R. H. Officer.

(Document offered as Plaintiff's Exhibit "A" shown the witness.)

That is my signature. That is the regular form of certificate of assay issued by R. H. Officer Company at that time. I cannot tell the exact date upon which I changed from this form to the form which we have had in use for several years, but that is the form of assay certificate that was had at one time and used by the R. H. Officer Company. R. H. Officer Company is not a corporation. They have been in business twenty-one years. I have access to their books and records. Since becoming manager of that company in May, 1905, I have been constantly in attendance upon the work of that company. [158]

I recollect a man by the name of B. F. Saunders. He brought me a sample of ore and asked that our company assay it, but I couldn't mention that specifically as to the time, and what sample. I have a record of the sample of ore brought to me for assay purporting to come from the Kane lode, Warm Springs mining district, Coconino County, Arizona. That ore sample as brought to me was assayed and

(Deposition of William Black.)
certificate of assay issued thereon.

Q. I will ask you then, Mr. Black, whether or not exhibit "A" is in its present form the certificate of assay which was issued? A. It is not.

WITNESS.—(Continuing:) I am able to state from my records what the original certificate showed as to the tungsten content of the ore submitted to me. That certificate originally issued showed no tungsten.

Our original records show that the date of the certificate of assay upon the sample given from the Kane lode, Warm Springs mining district, Coconino County, Arizona, was August 7th, 1906. Our records show whether or not an assay was made upon ore from this lode in this district on August 7th, 1904. That is the records in our office. There is no record of such an assay having been made on August 7th, 1904.

It is the practice of our office to keep a record of the assays as they are run, and certificates issued thereof. The signature "R. H. Officer, Assayers, W. A. B." is in my handwriting. Without looking it up, to the best of my ability it was not customary for me to sign certificates of assay as that is signed on August 7th, 1904. It was customary for me to sign them in 1906, and I signed substantially all the certificates of assay that were issued.

(Witness shown a paper marked exhibit "B.") That is a record copy of R. H. Officer & Company, and bears my signature. That record, exhibit "B,"

(Deposition of William Black.)

corresponds with the certificate of assay which I issued in the regular course of business. [159]

Counsel for the Government then offered and read in evidence Exhibits "A" and "B," attached to the deposition of William A. Black, as follows:

**Exhibit "A" to Deposition of William A. Black—
Certificate of Assay.**

R. H. OFFICER & CO.

Assayers and Chemists.

Name—Mr. B. F. Saunders.

Salt Lake City, Aug. 7, 1904.

Assay per ton of 2000 pounds.

Marks.	Gold.	Silver.	
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Kane Lode Warm Springs,	oz.	oz.	Tungsten
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Mng. District, Coconino,			
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Ariz.	0.03	36.8	10.03
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Sample contains copper.

Charges \$6.00.

R. H. OFFICER & CO., Assayers.

W. A. B." [160]

**Exhibit "B" to Deposition of William A. Black—
Certificate of Assay.**

R. H. OFFICER & CO.

169 S. W. Temple St. Salt Lake City, Utah,

Mr. B. F. Saunders, Aug. 7th, 1906.

Assays per ton of 2000 pounds. Tungsten

W03

Name.

Gold.

Silver.

oz.

oz.

Kane Lode Warm Springs

Mining District

Coconino, Arizona. 0.03 36.8 0.0

R. H. OFFICER & CO.

W. A. B.

Charges \$——. [161]

Deposition of A. F. Rynders, for the Government.

Counsel for the Government then offered and read in evidence the deposition of A. F. RYNDERS, who testified as follows:

My name is A. F. Rynders. I am thirty-one years of age; I reside in Salt Lake City, Utah, and my occupation is bank teller for Walker Brothers, Bankers. I am acquainted with Ora Haley, and I knew B. F. Saunders during his lifetime. Mr. Saunders died in July, 1910. Prior to July, 1910, I was employed by Mr. Saunders and Mr. Haley as bookkeeper and stenographer. The business of Messrs. Saunders & Haley was livestock, and they were copartners in that business. They were engaged in the business in this western country and had livestock interests in what is known as the

(Deposition of A. F. Rynders.)

Buckskin Mountains, in the State of Arizona. As bookkeeper and stenographer my duties were keeping most of the records of the livestock transactions. In that capacity I kept a record of the investments of the partnership, but not all transactions. I was employed by Saunders & Haley from December, 1901, until the partnership was dissolved after Mr. Saunder's death.

The books of accounts as kept by me showed the expenditures of the partnership on the Buckskin Mountains and other ranches maintained by the partnership. There were three different foremen in charge of the Buckskin Mountain ranch prior to the death of Mr. Saunders, during my employment with the company. They were John F. Neal, Ben Majors and Charles Dimmick; not all at one time, but successively. Charles Dimmick was in charge from 1904 until the property was sold, as near as I can remember. My recollection is that the date of the sale was in 1906. After the death of Mr. Saunders I was connected with the closing up of the partnership of Saunders & Haley, by submitting inventory to the attorneys for the executor of the estate of B. F. Saunders after the death of Mr. Saunders. Mr. Haley and myself had charge of the papers of the partnership. The papers of the partnership, after the closing up of the partnership—winding it up, were destroyed. I destroyed them [162] myself by burning. I burned those papers on the advice of the attorney for the estate, as he stated they had no further use for them, the partnership being closed. Mr. Haley also thought there would be no further

(Deposition of A. F. Rynders.)

use for them. The books and papers destroyed contained records of different transactions; also letters and letter files that had accumulated in the thirteen years of Saunders & Haley's partnership. I don't remember having anything to do with the transmission of the papers otherwise in connection with the application for the Kane lode.

(Witness shown exhibit "C.") I don't recollect ever having seen this letter, exhibit "C," before. The papers of the Saunders and Haley partnership were destroyed in the fall of 1913.

Q. Prior to the destruction of those papers, had you or had you not heard that suit had been brought by the Government involving the title to certain lands which had theretofore been acquired by the partnership and transferred to the Grand Canyon Cattle Company?

Mr. STEVENS.—Objected to as immaterial and incompetent.

Objection sustained, and counsel for the Government then and there excepted.

(A. I had heard indirectly from the newspapers. I had talked with Mr. Haley about that suit. but I don't remember it was prior to the destruction of the papers or after. I learned from the newspapers that this litigation had been commenced several months before the destruction of the papers.)

WITNESS.—(Continuing:) I am not able to state whether the original letter of which exhibit "C" is a copy was destroyed with the papers. If the original letter was among the files and papers of the Saunders and Haley partnership it was destroyed.

(Deposition of A. F. Rynders.)

The papers destroyed then contained all the records, letters and instruments in writing relating to the partnership of Ora Haley and B. F. Saunders, and I have now none of those papers in my possession relating to that partnership. [163]

Mr. SHERIDAN.—I now offer exhibit “C,” attached to the deposition of A. F. Rynders, in evidence.

Mr. STEVENS.—Objected to on the ground there is not sufficient foundation laid in proof of mailing and no proof that exhibit “A” was sent in response.

Mr. SHERIDAN.—We have a witness by whom we expect to connect up this matter.

The COURT.—We will proceed on the affirmation of counsel that it will be connected up.

**Exhibit “C” to Deposition of A. F. Rynders—Letter,
Dated December 3, 1906, from Lorraine Pratt
to B. F. Saunders.**

UNITED STATES DEPARTMENT OF AGRICULTURAL FOREST SERVICE.

Fredonia, Ariz., Dec. 3, 1906.

B. F. Saunders,

Salt Lake City, Utah.

Dear Sir:

I write to inform you that your claims, in Kane Canyon, were inspected, by the Forest Inspector, W. W. Clark & myself, during the forepart of November, and reported to the Department, as requested.

Forest officers, are now required to send a sample of 15 or 20, lbs. of ore to be tested, for the information of the Forester, and as there was no samples of

(Deposition of Charles Dimmick.)

ore to be found on the Claim, it is impossible to tell just what action will be taken by the Department.

I have mailed to the Forester, the Assay which you sent me, taken from the Kane lode.

Very respectfully,

LORRAINE PRATT,

Forest Supervisor.

Copy sent Supervisor.

“ “ D. L.” [164]

Deposition of Charles Dimmick (Resumed), for the Government.

Counsel for the Government then offered and read in evidence the remainder of the deposition of CHARLES DIMMICK, who further testified as follows:

About May or June, 1906, I learned that there was a deal on between Saunders and Haley and H. S. Stevenson. By that I mean that they were considering a sale by Saunders & Haley to Mr. Stevenson. I wouldn't have it understood that the sale was made then, but that it was being considered. It came to my attention in May or June, 1906, by a letter from B. F. Saunders. I have not that letter in my possession. It was burned up by me a few years ago. The only thing I recall that Mr. Saunders said in that letter is that he contemplated the sale of the whole property to Mr. Stevenson. I cannot recall what appeared to be Mr. Saunders' purpose for conveying that information to me by letter in May or June, 1906, I just recall that there was such a letter and that he conveyed the information. The next negotiations occurred on or about April or May,

(Deposition of Charles Dimmick.)

1907, when Mr. Stevenson and Mr. E. J. Marshall came to the V. T. or Buckskin properties to look them over.

I was there when they came and met them. Mr. Stevenson and Mr. Marshall told me they had come there to look over the property. They looked over the property and I accompanied them. There was E. L. Clark, Charles Lewis and a man whose name I have forgotten also in the party. Mr. E. L. Clark was with the party representing Saunders and Haley and showing them the property. Charles was helping the camp outfit, also the other man whose name I cannot recall. Mr. Stevenson and Mr. Marshall accompanied by E. L. Clark, Charles Lewis and a man whose name I cannot recall made the inspection together as a party. I don't think that on the occasion of this inspection we visited all of the water sources that I have described in my testimony. The watering places on the Buckskin Mountain ranch that I visited in company with Mr. Marshall, Mr. Stevenson, Mr. Clark and the rest of the party, as nearly as I can remember, were [165] House Rock, Two-mile, One-mile, Pools, Sunset, Emmett, Kane Springs, South Canyon, Jacobs lake, Greenland lake, Greenland Spring, Bright Angel, Milk Creek, Sublime lake or pond, Kanabonics, Big Spring, V. T. Park lake and V. T. spring, Little Park lake, Pleasant Valley lakes, Crane lake, Joe's Mudholes, Mile-and-a-half and Three Lakes, I believe that is all. The others mentioned in my testimony given heretofore were not visited by this party.

The person in the party whose name I cannot re-

(Deposition of Charles Dimmick.)

call to mind was not Murray Averett. This party whose name I cannot recall served as a driver and camp helper. He was a man from Oklahoma, whose name I have now entirely forgotten. I don't recollect a person by the name of David Barney. On the occasion of this visit it took, I think, five days for the party to visit all the places I have named. The party camped wherever night would overtake them and went on the next day. Mr. Stevenson and Mr. Marshall questioned me pretty carefully about the extent of the ranch and the water supply and the stock on the occasion of this visit—went into that at a great deal of detail. Mr. Stevenson and Mr. Marshall both did the talking. They stated to me that the purpose of their visit was to inspect the ranch and stock. I don't think they made a subsequent visit for the purpose of inspecting the other places which they didn't see on this occasion, before the sale was closed.

Mr. Stevenson and Mr. Marshall asked what places there were; how many stock they would support; the water, etc. They asked me about the name of the place in each instance, the amount of stock that could be watered there, and the amount of the stock that the ranch would accommodate. They asked me about the manner in which some of these different water sources were held. In that regard they asked about House Rock, Two-mile, One-mile, Pools, Sunset, Emmett, Kane Springs, South Canyon, Jacob lake, Greenland Springs, Greenland lake, Bright Angel, V. T. Park lakes, V. T.

(Deposition of Charles Dimmick.)

Park Springs, Little Park lake, Crane lake, Joe's Mudholes, Mile-and-a-half and Three lakes, and in each of the instances I have just named they asked either me or Mr. Clark about the manner in [166] which these places were claimed and I think that I or Mr. Clark informed them of the manner in which they were claimed. I didn't have with me at that time any papers or documents to which reference was made when they inquired about the details of the claims. I don't think Mr. Clark did. If he did it was not to my knowledge. There was no other person in the party who spoke for Saunders and Haley except myself and Mr. Clark. So far as I know all the representations that were made were made by Mr. Clark or myself to Mr. Marshall and Mr. Stevenson.

Mr. Clark came down there in company with Mr. Stevenson and Mr. Marshall, and accompanied them throughout this inspection and back to the railroad. They took the train at Lund, Utah.

Q. Now, did Mr. Marshall or Mr. Stevenson, or both of them, go fully into all matters concerning the range, cattle, water supply, and the manner of holding the lands where waters were, on the occasion of this five days' inspection?

Mr. TULLER.—Objected to as too general and indefinite and leading and suggestive.

Objection overruled, and defendant, Grand Canyon Cattle Company, excepted.

A. I think so.

WITNESS.—(Continuing:) After this inspection had been completed and before Mr. Marshall and

(Deposition of Charles Dimmick.)

Mr. Stevenson left the ranch and took the train at Lund they didn't say anything to me about retaining me in case of a purchase.

When I was appointed ranch foreman under Saunders and Haley about 1901, I was given the appointment by Saunders in writing. I have not that appointment in my possession, it was burned up about five years ago with the other papers. It was in the form of a letter from Mr. Saunders. As nearly as I can recall it provided that I should take general supervision of the Buckskin Mountain ranch. The appointment was to run by the month. It was employment to be paid by the month, but not [167] limited to one month. It was a general appointment, and compensation to be paid monthly. That was signed by Mr. Saunders and up to the time of the sale by Saunders and Haley to the Grand Canyon Cattle Company that appointment was in no way modified or changed or revoked by Saunders, but stood until the time of the sale. It was under that appointment that I carried on my work here on the Buckskin Mountain ranch and the range covered by the stock of Saunders and Haley from the time I received the appointment in 1901 to the time of the sale made to the Grand Canyon Cattle Company.

I recall that Jacobs lake and the Jacobs lode covering that lake and other adjoining land was inspected by Mr. Stevenson and Mr. Marshall and the rest of the party, on the occasion of this visit. With reference to this particular watering place, the Jacobs lake, I think it was Mr. Stevenson who ques-

(Deposition of Charles Dimmick.)

tioned me about the manner in which that was held. He inquired how it was held or secured, and I informed him as a mining claim, and gave him the name of it, the Jacobs lode. I think I called it Jacobs lake, possibly Jacobs lode. I told him it was held under a mining claim. I couldn't say I pointed out to him the shaft and cut on the claim or whether I just called him attention to the water supply when I made known to him the fact that it was held under a mineral claim. I don't think he made any inquiries about the mine or mineral on the claim.

On the occasion of this inspection the party didn't visit the Noonday lode mining claim to my recollection. They didn't visit the One-mile ranch and they made the same inquiries about that as they did about the Jacobs lode and I informed them of the manner in which it was held. I don't recall now whether that One-mile ranch had a mineral location on it.

The Noonday lode is on a Little Spring about a half mile east of One-mile ranch. The One-mile ranch is a forty-acre tract and was held under scrip. I don't remember whether the party visited the Noon Day lode which is about a half a mile from the One-mile ranch.

The inspecting party also visited the Jacobs Pool ranch which [168] I have also referred to as the Pools. It used to be called Jacobs Pools but since the name "Jacobs lake" came into existence they dropped the name of Jacobs pools and called it "The Pools."

The Sunset mill site does not cover a part of the

(Deposition of Charles Dimmick.)

Pools. The Sunset mill site is somewhere in the neighborhood of half a mile east or a little north of east of the Pools. So the inspecting party didn't go over to the Sunset mill site, but they went to the Pools, which was within one-half mile.

As to the Sunset lode and Emmet lode they went to the end of the pipe-line and tanks and reservoir, but didn't go up to either of these claims. They did look over the pipe-lines and the tank. When they inspected the Emmett lode they made the same inquiries as they did about the Jacobs lode as to the manner in which it was held, and I informed them it was held under the mineral location. The inspecting party didn't look at East lake nor Snipe lake nor at Frank's lake, but they did look at Crane lake, and inquired about the manner in which it was held, and informed them it was held under mineral location.

In these cases where they made an inspection of these claims they didn't look over the pipe-lines in all of them. They inquired about all the pipe-lines but didn't look them over. They inquired to ascertain what the pipe-lines were for, the amount of stock watered, etc., in a general way. They inspected the Crane lake and inquired as to the manner in which that was held and were informed by me it was held under a mineral location. They made practically the same inquiries at every place they visited, and got practically the same information in each one when they made any inquiries as to the manner in which the claims were held and the amount of stock. I gave them the same information

(Deposition of Charles Dimmick.)

in detail on all those places. I gave them the details as near as I could. I think I informed them of the existence of the other watering places which they did not visit. There might have been some overlooked, but I think every watering place; that was my intention in every instance, and I made my best efforts. [169]

Q. And informing them of these claims which they did not visit you told them of the development there and of the manner in which those claims were held?

A. Anything I knew about them, the claims.

Q. You gave them that full information?

A. Yes, sir.

Q. You gave that to Mr. Stevenson and Mr. Marshall on the occasion of his visit and inspection?

A. I can't say that I gave it to them both. I gave it to either one or the other.

Q. The information that you gave one was in the presence of the other, they were both interested in the matter?

Defendant objected on the ground that the question called for a conclusion of the witness, that it was incompetent, irrelevant and immaterial, which objection was overruled and exception taken.

A. Yes, sir, generally.

Q. And your knowledge as to these claims which the inspecting party did not visit is fully set out in the testimony which you have given as to the development of these claims?

A. So far as I know.

Q. And that was the information you gave to Mr. Stevenson and Mr. Marshall on that visit?

(Deposition of Charles Dimmick.)

Defendant objected on the ground that the question was too general, too vague and indefinite. Objection was overruled and exception taken.

A. Yes, sir.

Q. Did Mr. Stevenson or Mr. Marshall express any opinions as to what they thought about the Buckskin Mountain Ranch as a whole after the inspection had been completed?

A. Not in my presence.

Q. They just took it all in?

A. And went back home.

Q. And went back home? A. Yes, sir.

Q. I suppose, Mr. Dimmick, that you had all of the details of the claims visited and the claims not visited at the time of this inspection more distinctly in your mind than you have now?

A. I certainly did.

Q. And you gave them the information you had at that time, didn't you?

Defendant objected on the same grounds heretofore stated, as too vague, indefinite and general, and on the ground that in effect counsel and not the witness was testifying.

The COURT.—I cannot for the life of me determine just what that information was that is referred to here.

The objection was overruled and exception taken.

A. Yes, sir.

Mr. Stevenson and Mr. Marshall didn't talk to me about employing me to handle that ranch in case they should take it over. Mr. Marshall practically employed me after they had purchased the prop-

(Deposition of Charles Dimmick.)

erty. H. S. Stevenson also had to do with by employment by Mr. Marshall—both Mr. Marshall and Mr. Stevenson—about all Mr. Marshall said was that he would like to have me stay on the property and handle it for them for awhile at any rate. At that time I gave him the answer that I would see that it was handled and stay there myself until next spring. This conversation with Mr. Marshall I think was in August, 1907. I saw Mr. Marshall at the time he spoke to me about this at V. T. Park on the Buckskin Mountain. This was after the inspection that I have already testified about, August, 1907, I believe. It might have been the last of July, and the inspection was made in April or May, 1907.

[170]

Mr. Marshall was down there on the Buckskin Mountain ranch in July or August, 1907, with a couple of men from Los Angeles whose business I do not know. I learned their names but I have forgotten them. He didn't inform me what he was doing there at that time. I think he stayed on the occasion of that visit in July or August, about a week, and just stopped at the ranch headquarters where I was, in passing by. I think he stayed there two nights, coming and going, the rest of the time he stopped at Bright Angel. He stopped one night coming and one night going, to and from Bright Angel, and then went on to the train. Mr. Marshall didn't make any subsequent visits to the Buckskin Mountain ranch before I terminated my services with Saunders and Haley.

(Deposition of Charles Dimmick.)

At the time Mr. Marshall spoke to me about staying on and working under him he didn't say anything about the capacity in which I was to work for him, more or less, than the continued handling of the proposition in the same way I had been handling it for Saunders and Haley. He didn't specify any changes. He said to stay on in the same way I had been. That is the way I understood it. He didn't say anything to me about compensation.

I had some conversation with Mr. Stevenson about my employment afterwards, about the last of October, 1907, at the V. T. Park, Buckskin Mountain. This was subsequent to that inspection. Mr. Stevens was there in October, receiving the cattle, counting over the cattle that were to be purchased of Saunders and Haley, and that was being done at the V. T. Park ranch at that time.

Q. Now, what did Mr. Stevenson say to you about your employment?

Mr. STEVENS.—I object to that question on the ground that it does not show that Stevenson was an authorized representative of the Grand Canyon Cattle Company.

The COURT.—I overrule the objection, but I shall exclude it unless it is shown by the testimony that he had the authority to act for the Grand Canyon Cattle Company, and to employ Mr. Dimmick. [171]

Mr. STEVENS.—Note an exception. I suppose that this objection and exception might apply to all this testimony.

(Deposition of Charles Dimmick.)

The COURT.—Yes.

A. He wanted me to go on and take supervision of the entire works—Kane Beds included. Not only the Buckskin Mountain ranch but the Kane Beds ranch also.

WITNESS.—(Continuing:) At that time I agreed to do so. I received my last payment as ranch foreman for Saunders and Haley about the last of October, 1907. I received my first payment from either Mr. Marshall or Mr. Stevenson about the first of January, 1908. I received compensation for part of the month of November from the Grand Canyon Cattle Company. My employment with the Grand Canyon Cattle Company, after the termination of my services with Saunders and Haley, commenced, I think, on the 15th of November, 1907. I was paid by Saunders and Haley up to about ten days or two weeks before that time, and during that ten days or two weeks I was in Salt Lake City on my own time.

At the time of the termination of my services with Saunders and Haley I received a communication from B. F. Saunders personally advising me of the termination of my services. That was about the last part of October or the first of November, during the time I was in Salt Lake. I didn't return to the Buckskin Mountain ranch on the 15th of November, I think it was about the first of December that I got back there, but I was under appointment from about the 15th of November.

Q. Now, when you went back to the Buckskin

(Deposition of Charles Dimmick.)

Mountain ranch what authority did you have from the Grand Canyon Cattle Company as to the management of that ranch, and I include the Kane Beds ranch too?

Mr. TULLER.—We object to that on the ground it's a conclusion of the witness, and it's incompetent to prove the authority of an agent by the declaration of the agent.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

A. I was superintendent of the Buckskin Mountain ranch and the [172] Kane Beds ranch.

Q. And as superintendent you were authorized to purchase supplies?

Objected to as calling for a conclusion of the witness.

Objection sustained, and counsel for the Government then and there excepted.

A. Yes, sir.

Q. And you did do so?

Mr. TULLER.—The same objection.

Objection sustained, and counsel for the Government then and there excepted.

A. Yes, sir.

WITNESS.—(Continuing:) My work as general superintendent consisted in generally looking after the cattle in the ranch in pretty much the same way I did under Saunders and Haley, with the difference that I had the Kane Beds ranch added to my jurisdiction as well as the Buckskin Mountain ranch.

(Deposition of Charles Dimmick.)

As superintendent of these two ranches I had foremen under me on both ranches. I made my headquarters all over the property, practically my winter quarters were at Kane Springs and summer headquarters at the V. T. Park.

What I designate as the V. T. Park lake is right in the middle of the Buckskin Mountains, square on top. The V. T. Springs is right on the V. T. ranch there are three or four lakes on the V. T. Park.

Q. So your appointment under the Grand Canyon Cattle Company was for a limited period?

Mr. TULLER.—Objected to as calling for a conclusion of the witness and not a statement of the facts as to the appointment.

The COURT.—I admit it under the same qualifications that I admitted the other.

Mr. TULLER.—Exception; and that will cover all the rest of the questions on the same matter.

The COURT.—Yes. [173]

WITNESS.—(Continuing:) From the time of the beginning, including the year 1908, it ran from about November 15th, 1907, to and including the year 1908. I received a monthly compensation for my services.

Q. Now, about all the information that was in your possession, Mr. Dimmick, at the time of this inspection by Mr. Marshall and Mr. Stevenson concerning the entire affairs of the Buckskin Mountain ranch was made known by you to the best of your ability to Mr. Stevenson and Mr. Marshall on the occasion of that inspection, wasn't it?

(Deposition of Charles Dimmick.)

Mr. TULLER.—Objected to on the ground that it's incompetent, irrelevant and immaterial and because it calls for a conclusion of the witness and is so vague and indefinite as to be of no probative value and inadmissible.

The COURT.—I sustain the objection, and also on the ground that it has been previously answered.

Counsel for the Government then and there accepted.

A. Yes, sir.

WITNESS.—(Continuing:) I didn't give them information about the Kane Beds ranch, I left that to the other superintendent over there. I had nothing to do with the Kane Beds at that time. The transfer of the stock was begun about the first of October, 1907, and was completed about the last of October or the first days of November, 1907.

I may have met a Mr. Selden F. Harris, an officer in the Forest service, while I was on the Buckskin Mountain ranch; I cannot recall him. The chances are I did meet him if he was on the Buckskin Mountain.

I was not present at all the time the stock was being counted. I should judge I was there over half the time while it was being counted.

I believe David Barney to be a teamster for Mr. Marshall on the trip about July or August, 1907; I also want to give the names of a few more watering places that I have recalled that were on the Buckskin Mountain ranch in addition to the other given: Pond Canyon Lake, Milk Creek, Soap Creek, North

(Deposition of Charles Dimmick.)

Canyon, Wild Cat and three or four other lakes we never had any names for. The last additional watering places that I [174] have mentioned were not covered by any form of location or claim. All of the other watering places that I have mentioned heretofore in my testimony had some form of location or claim as testified by me. These last watering places that I have just given were not covered by any form of claim—were not developed in any way for stock use. They were just natural pools and springs; they were within the boundaries of the Buckskin Mountain ranch or range and were used by Saunders and Haley for stock.

On cross-examination by counsel for the Grand Canyon Cattle Company, the witness testified:

I first went to work for Saunders in 1894 and from that time to 1897 I was engaged in the handling of stock and ranching. From 1897 to 1901 I was doing all kinds of work with livestock—trailing, holding stock on summer ranges; general ranch work. After 1901 I was in charge of the Buckskin Mountain as ranch foreman, boss or superintendent. All these terms were used to designate my employment at different times. The general fact of my employment I remember, but after this lapse of years a great many details are indistinct.

There was a surveyor named Horn who came down there to that ranch to make some surveys. He was making a survey on Three Lakes tract, House Rock tract, Two-mile tract, One-mile tract and the Pools and maybe other surveys. He didn't make any sur-

(Deposition of Charles Dimmick.)

veys on the Jacobs lode, Emmett lode or Sunset lode and mill site, or Noonday lode, to my knowledge or recollection. I presume Mr. Horn was sent down by Mr. Saunders, but I am not positive.

My work for Saunders during the time I have mentioned was always in the capacity of ranch foreman or in the earlier part of my employment, general ranch work. I never did any work for him in connection with any other interests. He had sheep interests, but I don't know whether he had any interests aside from livestock; he might have had.

[175]

I know very little of mining operation. I know at times when a mine is opened that it frequently occurs that the operation of the mine is interrupted by the inrush of water. That is, the mining operations sometimes produce water as an instance without seeking for water and the water will run in by seepage or sometimes in an open spring.

I didn't locate any of the four claims—the Jacobs lode, Sunset, Noonday or Emmett. I am not prepared to say that no mineral was ever taken out of any of these four claims; I don't know. Some mineral might have been taken out without my knowing it.

The yearly reports that I made to Mr. Saunders were in the regular discharge of my duties as ranch foreman, and were concerning everything connected with the affairs I had anything to do with or what I did or had done; it was part of my business amongst other things to see that the stock on the range was

(Deposition of Charles Dimmick.)

provided with sufficient water; that was a part of my regular work, and it was my business to get water wherever I could and develop it the best way I could and take care of it without regard to the nature of the claim where I got it—within the boundaries of the range. It didn't make any difference to me whether it was a mining claim or any other sort of a claim or location, if I could get the water out of it. When I wanted water for cattle I got the water wherever I could, regardless of any conditions that might exist. I had no authority at any time to sell any of this property or to enter into negotiations for a sale, with the exception of the livestock, and I never did negotiate with anybody for the sale of any claims down there or other property, except livestock.

To the best of my recollection the first visit that Mr. Marshall and Mr. Stevenson made to the ranch was in April or May, 1907, it might have been in April, 1906, but it occurs to me that it was in the year 1907, and in the months of April or May; my recollection on that subject is not perfectly clear.

In April or May of some years the Buckskin Mountain country would be easy of access, and some years it would not. I don't remember the [176] weather conditions of April or May, 1907, but the weather was a little stormy in that vicinity on that visit. I know that because I got wet. There were practically both snow and rain storms. The condition of the roads and trails was fairly good, some mud on top of the mountain, but not impassable. I am referring to the condition of the roads and trails

(Deposition of Charles Dimmick.)

at the time of that visit, without specifying whether it was in April or May.

In going over the property at that time with Mr. Marshall I acted as guide and went with them in order to answer any inquiries they might make.

Q. You did not know anything about the capacity in which Mr. Stevenson was present there any further than that he was with Mr. Marshall?

A. Yes, sir, he was in the capacity of inspecting and looking over the property with the view of purchasing.

Counsel for Grand Canyon Cattle Company moved to strike out the answer on the ground that it is a conclusion of the witness and that the answer does not show that the witness spoke with any knowledge on the subject.

This motion was denied and the Grand Canyon Cattle Company excepted.

Q. Did he say to you that he was a purchaser or possible purchaser?

A. He told me that it was his business to look over the property and inspect it.

Said defendant moved to strike out the question on the same ground, which motion was denied and exception taken.

Q. Look over the property and inspect it?

A. Inspect with a view to purchasing.

The same motion, ruling and exception occurred on this question and answer.

Q. Did he say that he was intending purchasing?

A. I don't know whether he said directly or not,

(Deposition of Charles Dimmick.)

but at any rate I got the understanding from him and Mr. Marshall that they were there for the purpose of inspecting the property with a view of purchasing.

Statements of that sort were made to me by Mr. Stevenson. I have no recollection of Mr. Marshall saying anything or mentioning the purchase.

As regards the cattle sale or negotiations of the sale, aside from the mere inspection and information I had, was what I had received in a letter from Mr. Saunders. I specified certain watering places on the range as those visited on that trip and those I didn't specify, I didn't, to the best of my knowledge, visit. As they made inquiry I gave them the best information I had as I stated in my previous testimony.

Q. So that in giving information as to the patented mining claims which were part of the property you didn't go into details with regard to matters that would not be interesting or important aside from a view of the property as stockraising property?

Mr. SHERIDAN.—Objected to as calling for a conclusion of the witness.

Objection overruled, and counsel for the Government then and there excepted.

(No, sir.) [177]

Q. This inspection was as you had in mind, for the purpose of finding out whether the property was valuable and how valuable it was for the purpose of raising stock?

Counsel for the Government objected as calling

(Deposition of Charles Dimmick.)

for a statement of the witness as to what Mr. Marshall had in mind, which objection was sustained, and counsel for the Grand Canyon Cattle Company duly excepted.

A. Yes, sir.

Q. And you confined yourself in your explanation and answers to that conclusion?

Same objection, ruling and exception.

WITNESS.—(Continuing:) I didn't explain to them the character of the mineral nor how much mineral there was, or was not.

I had a conversation with Mr. Marshall about August, 1907, at the V. T. Park regarding employment, but I was not employed by Mr. Marshall at that time. The conversation, as near as I can recall it, was that Mr. Marshall at that time wanted me to accept the supervision or general ranch foreman of that property, and I stated to him that I would, or would see it was taken care of during the coming winter. As to the time of this conversation, by day or month, I am not clear. It might have been later than August, 1907. My employment with Mr. Marshall didn't commence until about November 15th, 1907, so that before that date I was not working for Marshall or for the Grand Canyon Cattle Company in any capacity. The first payment I received from Mr. Marshall was, I think, about January first, 1908; that payment was by check payable to myself, issued by myself on the First National Bank of Los Angeles. I don't know whether it would be termed a sight draft, it was directly on the bank. A Grand Canyon

(Deposition of Charles Dimmick.)

Cattle Company check on the bank, signed by myself.

In October, 1907, the purchaser or purchasers were engaged in counting the stock on the range, and that counting continued, to the best of my recollection, for thirty days, and ended about October 30th. Not all the stock were counted, because they were not gathered. They counted something like seven thousand head and there were about ten thousand head on the range. The remainder were not counted because the Grand Canyon Cattle Company and their representatives with Saunders and Haley, through an agreement entered into stopped or discontinued the counting of these cattle on the basis of ten thousand head. The reason why the remainder of several thousand head were not gathered or counted on the part of the Grand Canyon Cattle Company was that Saunders and Haley had one year in which to gather and deliver the entire herd of cattle, and therefore wished to stop the handling and jamming, and by so doing damaging this herd of cattle, and on the part of Saunders and [178] Haley to stop the big and heavy expense of continuing the gathering of the cattle. So they just arbitrarily agreed to quit making the estimate.

The weather down there at the time they were gathering and quit counting was very stormy, and the storm interfered and made the counting difficult.

David Barney, as I now place him, was a teamster with Mr. Marshall and Mr. Stevenson's party on the trip to the Buckskin Mountain about August, 1907. That was the trip after the inspection. It was the

(Deposition of Charles Dimmick.)

same trip that Mr. Marshall made to the V. T. Park that I referred to a while ago when I was talking employment with him. With reference to the property involved in this suit the Jacobs lode, Emmett lode, Sunset lode and mill site, I think, I stated that I knew that they were mineral claims. I would know by the location notices on them, but I didn't locate any of them.

On redirect examination by counsel for the Government, the witness testified:

I recall one of the teamsters who was along with Mr. Marshall and Mr. Stevenson and Mr. Clark on the occasion they came down and made their first visit and inspected the ranches with me. His name was Hiram Polic. There was another driver or helper with the party whose name I do not now recall. He was a young man about thirty, heavy set, light complected and inclined to be what you would term to be sandy—red faced. He was always called "Bill." Hiram Polic came from Cannonville, Utah. I wish to correct my former statement regarding Charlie Lewis, having him in mind in place of Hiram Polic at that time. So when I said that Charles Lewis was a member of the inspecting party I now wish to be understood that it was Hiram Polic instead of Lewis. The person whose name I don't recall was not David Barney. It is my recollection that David Barney was with Mr. Marshall on his August, 1907, trip. [179]

About seven thousand head of cattle had been counted and gathered when they stopped counting

(Deposition of Charles Dimmick.)

and a year was allowed in which to find out the entire number of stock, and the estimate agreed upon pending the complete count was ten thousand head. In arriving at this estimate Mr. Saunders and Mr. Marshall and Mr. Stevenson relied on their own judgment, but they didn't know the entire number of stock, and nobody to my knowledge suggested to them that there were ten thousand head. I would naturally assume that Saunders and Haley when taking their tallies and *get* their estimates, and I would naturally suppose that Mr. Marshall and Mr. Stevenson would rely on the information of Mr. Stevenson, he being there on the ranch and seeing the conditions and seeing how they were handled, and maybe asking questions of others. And if Mr. Marshall did ask me anything I don't think that would influence him. I was consulted as to my opinion as to the number of cattle, and I agreed with that estimate. That is my best recollection of the manner in which that estimate was arrived at, and when I say I assume that is the way, I mean my best recollection and best knowledge that I have about it.

In referring in my testimony to the time when the purchase was made by the Grand Canyon Cattle Company, I didn't use the word "purchase" as meaning the time of the actual execution of deeds transferring the property. I meant the time the bargain or sale was agreed upon between the parties. That was not agreed upon in my presence, but I knew that through Mr. Saunders and through these nego-

(Deposition of Charles Dimmick.)

tiations with Mr. Stevenson. When I refer to the purchase, the inspection by Mr. Marshall and Mr. Stevenson in my company was before the purchase. I don't think Mr. Marshall, Mr. Stevenson and myself at the time of the first inspection, visited the watering places that I last referred to. I cannot say positively that I informed them of these places, but I think so. My best recollection is that I gave them full information as I then possessed it concerning these watering places and the manner in which they were held and the developments thereon. [180]

Q. When you were showing the inspecting party, consisting of Mr. Stevenson, Mr. Marshall, yourself and Mr. Clark, and the drivers or helpers who accompanied these parties over these lands, you gave your very best efforts to inform them, Mr. Stevenson and Mr. Marshall, of everything concerning the ranch that you knew?

Counsel for the Grand Canyon Cattle Company objected to this question on the ground that it is too vague and indefinite, which objection was overruled and exception taken.

A. Yes, sir.

Q. And you didn't hold back anything?

Counsel for the Grand Canyon Cattle Company made the same objection, the Court made the same ruling and the same exception was taken.

A. No, sir. I had no instructions from Mr. Saunders to hold back anything. On the contrary, I had instructions to give them all the information they wanted, and all I knew.

(Deposition of Charles Dimmick.)

I was not authorized to enter into negotiations with anyone for the sale of this property or to assist in the negotiations more than showing them this property and describing it to them as I have stated. I was authorized to that extent and had instructions to do that very thing, and did do so.

With reference to the four patented claims, the Noonday lode, the Jacobs lode, Sunset lode and mill site and Emmett lode, I informed Mr. Stevenson and Mr. Marshall of the manner in which these claims were held. That is, as mineral claims, but I didn't go into the particulars of the improvements on those claims. The party visited the improvements on the Jacobs lode, but I cannot say positively whether I showed them the shaft and cut there. I think they went through the claim pretty fully. They didn't visit the other three patented claims, the Noon Day, Sunset and Emmet claims, but they were given full particulars by me concerning them of the development of water and piping and all that.

I couldn't say whether I pointed out the pipe-lines or not, but at any rate from the end of the pipe-lines or points where that was they were shown where these pipe-lines extended as coming from those other places. What I mean to say about the pipe-lines being explained would be to show Stevenson and Marshall where these claims and water places were located, and how they were held, and give them a general idea of the development and work or improvements that was on each and every one of them. And I did actually tell them when I come in contact with

(Deposition of Charles Dimmick.)

the pipe-lines from the Noonday, Sunset and Emmet claims that the pipe-lines did come from those claims.

[181]

I never saw, during the entire time that I was employed by Saunders and Haley, and up to the time that my services were terminated, any mineral mined on or shipped from any of the patented claims, namely: The Jacobs lode, the Sunset lode, the Emmett lode, and the Noonday lode.

When Mr. Horn came down to make some surveys in the Buckskin Mountain country or ranch, Mr. E. L. Clark of Parowan, Utah, was with him. I don't think anyone else came with him. Mr. Clark and Mr. Horn told me that they came to survey those tracts I have mentioned in my cross-examination and to which I also made reference in my direct examination. They also disclosed to me the purpose for which they were surveying them then and told me it was for the purpose of placing scrip on it. And all these surveys covered the waters described by me within those tracts. They also made known to me the fact that they came there at Mr. Saunders' direction for the purpose stated.

On the occasion of Mr. Saunders' visit to the Buckskin Mountain ranch, he used to chat with me freely in an informal and friendly way, and I was on good terms with him while I was in his employ. I have no recollection that he ever talked to me about his being in the mining business. I knew him as a cattle man and sheep man.

With reference to the one year period that had

(Deposition of Charles Dimmick.)

been agreed upon in which to complete the counting of the cattle, the cattle were never all counted, but so far as I know the transaction was closed on a basis of ten thousand head. The agreement that I referred to of a year's time in which to make this count was providing for the count being made before the purchase of the cattle was completed.

I was employed by the Grand Canyon Cattle Company about November 15th, 1907, and it was December first or thereabouts that I went back to the Buckskin Mountain ranch in charge of that and the Kane Beds ranch for the Grand Canyon Cattle Company.
[182]

**Deposition of Edgar L. Clark (Resumed), for the
Government.**

Counsel for the Government then read in evidence the remainder of the deposition of EDGAR L. CLARK, who further testified as follows:

I think the sale by Saunders and Haley of the Buckskin Mountain ranch to the Grand Canyon Cattle Company was in 1907. I took part, under Mr. Saunders' direction, or under the direction of Saunders and Haley, in the negotiations leading up to the sale of the Grand Canyon Cattle Company, and arranged for and did take Mr. Marshall and Mr. Stevenson, who represented the Grand Canyon Cattle Company, from Lund, a railroad station in Iron County, over to the Buckskin Mountain ranch and conducted them around on the ranch and back

(Deposition of Edgar L. Clark.)

as far as Toquerville, Washington County, and arranged for them to be taken back to the railroad.

Mr. STEVENS.—We move to strike out that part of the answer where the witness states “who Mr. Stevenson represented, the Grand Canyon Cattle Company, as a mere conclusion.

The COURT.—I admit that with the understanding that if it is not subsequently shown that Mr. Marshall or Mr. Stevenson represented the Grand Canyon Cattle Company in this purpose it would be excluded.

Counsel for the Grand Canyon Cattle Company then and there excepted.

WITNESS.—(Continuing:) The Mr. Marshall to whom I refer is E. J. Marshall, who, I understand, is president of the Grand Canyon Cattle Company. Mr. Stevenson's initials are H. S., if I remember correctly. I met this gentleman at the suggestion of Mr. Saunders, who instructed me when I visited the ranch in company with Mr. Marshall and Mr. Stevenson to show them the ranch with a view of it being sold to them. This visit was made to the ranch in June, 1907, as I remember. In the party besides myself, Mr. Stevenson and Mr. Marshall, there were Mr. Charles Dimmick, who was foreman of the ranch, and I presume possibly one or two ranch hands would accompany us on a trip around the ranch. I have a [183] distinct recollection that Charles Dimmick was one of the party. I don't recall the names of the ranch hands nor how many there were

(Deposition of Edgar L. Clark.)

that went with the party. I was working for Mr. Saunders at the time he instructed me to accompany Mr. Marshall and Mr. Stevenson on this inspection trip, and was not associated with him in any business transaction at that time. My relations with him were that of an employee at that time. I didn't know at that time what my compensation in that particular transaction would be. It was not determined in advance. It was later arranged that the amount of compensation I received was determined on the basis of a commission.

I accompanied Mr. Stevenson and Mr. Marshall over most of the range, but whether I visited the greater number of watering places that were to be found on the ranch at that time I am not able to say. I would think that perhaps at least half of the watering places were visited by myself in company with Mr. Marshall and Mr. Stevenson at that time. That is my best recollection at the present.

As I remember, Mr. Saunders gave me oral instructions in a conference with him in Salt Lake City. He didn't give me any papers or documents to take with me in pointing out these different places to Mr. Stevenson and Mr. Marshall. I don't recall on that occasion visiting, in company with Mr. Stevenson and Mr. Marshall, the mineral claims now in suit, namely: The Sunset lode, the Emmett lode, the Jacobs lode and the Noonday lode, except the Jacobs lode; that I didn't know the name of but I presume it was the one at Jacobs lake, and we did visit that. I don't remember now that I knew

(Deposition of Edgar L. Clark.)

anything about those mineral locations at the time spoken of.

From the time I was first employed by Mr. Saunders on the Buckskin Mountain matters down to the time of sale of the Grand Canyon Cattle Company, I don't know of any mining that Mr. Saunders or Saunders and Haley ever did on the Buckskin Mountain ranch and never knew of their shipping any ore from the Buckskin Mountain ranch. They were engaged in the livestock business on that ranch, principally the raising of cattle. [184]

I think Mr. Dimmick was along with the patry during the entire inspection, but I cannot remember that there was any special conversation between myself and Mr. Marshall and Mr. Dimmick during the inspection. We were talking about the range and about the game, and I now recall that Mr. Stevenson and I had a conversation about the fine condition of the ranch at one particular time while we were riding over a part of it. I think there was only one inspection of the ranch by this party accompanied by me. I don't remember that Mr. Saunders instructed me to lay the situation with reference to titles to all of those watering places on the Buckskin Mountain ranch before Mr. Stevenson and Mr. Marshall. My best recollection is that Mr. Saunders instructions were general, and that I should conduct Mr. Marshall and Mr. Stevenson over the ranch for the purpose of enabling them to see for themselves. I don't think Mr. Saunders gave me any special instructions about laying the

(Deposition of Edgar L. Clark.)

matter of titles before Mr. Stevenson and Mr. Marshall. I don't remember whether I informed Mr. Stevenson and Mr. Marshall of the form of claim under which Mr. Saunders held any of the claims which I have purchased from other persons for Mr. Saunders. I would like to go further: That in describing to him a claim that we didn't visit that it was held under a scrip title and that it would be the claim of Soap Creek. It was an out of the way place and we didn't visit it, but I don't remember about the other claims that we didn't visit.

I do not remember of hearing any conversation between Charles Dimmick and Mr. Marshall and Mr. Stevenson concerning the manner in which Mr. Saunders held these various watering places.

I think I spent with Mr. Stevenson, Mr. Marshall and Mr. Dimmick, on this inspection tour, about six days on the ranch. That was the time we were actually on the ranch not including the time of coming and going. I don't recall whether I made a written report of this inspection to Mr. Saunders. [185]

Q. I will now call your attention, Mr. Clarke, to the record of the testimony already taken in this case, and particularly to a part of the testimony of James S. Emmett, and I will ask you to read over two pages of that testimony and tell us if you recall the conversation therein referred to Mr. Emmett between him and you?

A. Well, I do recall a conversation similar to that statement of Mr. Emmett's, but I cannot recall as to the time.

(Deposition of Edgar L. Clark.)

WITNESS.—(Continuing:) It seems to me that it was before I bought the spring that the conversation was had between Mr. Emmett and me in regard to not being able to get it sooner, but I didn't know he had a claim on it, as I remember, until we were there making these locations. At the time I had this conversation with Mr. Emmett, as I remember, I intended to locate this same watering place on which Mr. Emmett already had his claim until Emmett told me it was his, and forbid me to make the location on it. I intended to locate it, as I remember it, with scrip. I don't remember whether I subsequently located it for Mr. Saunders with scrip, nor do I remember whether I located it subsequently as a mining claim. In fact, I am not sure I assisted in the location of that mining claim. I do recall that I had a conversation with Mr. Emmett in substance as shown in his testimony.

I never knew of Mr. Haley of the partnership of Saunders and Haley, taking any active part in the management of the Buckskin Mountain ranch.

I was the executor of Mr. Saunders' estate, appointed without bond, and was a very near and dear friend of Mr. Saunders for a number of years past. Mr. Saunders didn't leave any part of his estate to me or my family. There is no relationship of consanguinity or affinity between me or Mr. Saunders' family. I don't know where the personal papers of Mr. Saunders are at this time. According to my best recollection I don't recall seeing the reports that Mr. Dimmick made yearly to Mr. Saunders. [186]

(Deposition of Edgar L. Clark.)

I now remember of a written document pertaining to the ranch claims being examined by Mr. Stevenson or Mr. Marshall or both, while we were at the Kane ranch, the winter headquarters, and as I remember it was furnished by the foreman Charles Dimmick. I remember only one document and I don't remember whether Mr. Dimmick, Mr. Stevenson or Mr. Marshall carried that document while they were looking over the claims.

There was a small amount of pipe laid at two or three watering places prior to 1900. I observed that there had been additional piping of water from the water sources, springs, or artificially developed water on the Buckskin Mountain ranch after 1900. Piping had begun after 1900, I observed, at House Rock proper; that is House Rock Spring, I refer to, an additional amount of piping to the extent of in the neighborhood of three or four miles carrying water from House Rock out into the valley further, and at the Pools the water was piped, and I don't remember whether it was piped later when I was there. I will say it was piped out from the hills into the valley perhaps a half mile, and at the East Pools it was piped out a mile or more, and at South Canyon it was piped out about five miles. All this piping I observed as having been put in after 1900, or put in by Saunders and Haley for the purpose of watering stock.

I was present when negotiations were had between Mr. Saunders, Mr. Stevenson and Mr. Marshall concerning the closing out of this purchase in Salt Lake

(Deposition of Edgar L. Clark.)

City. I recall the conversation that occurred between Mr. Saunders and the purchasers, Mr. Marshall and Mr. Stevenson. According to my understanding the original agreement was that Mr. Saunders should have a year in which to complete the gathering and delivery of the cattle and horses on the Buckskin Mountain ranch. Mr. Saunders was desirous of closing the deal up entirely at that particular time, and made an effort to do so by agreeing with Mr. Marshall and Mr. Stevenson as to the number they would allow him and accept the delivery as final. This number would [187] be in addition to the number that had already been delivered. They finally agreed upon the number. That was the substance of the conversation between Mr. Saunders and Mr. Marshall and Mr. Stevenson, as I recall it. I think that was somewhere in the fore part of December, 1907.

As I understand it there were written agreements between June, 1907, the time of the inspection, and the time of this conversation, but I don't know where those written agreements are; I may have read them over, but cannot remember for certain.

I don't think that Mr. Saunders after his agreement to sell to the Grand Canyon Cattle Company, or after the execution of the deeds completing the sale to the Grand Canyon Cattle Company, retained any interest in the Buckskin Mountain ranch for himself. I am very confident that he did not, and am very confident that Mr. Saunders didn't go into the Grand Canyon Cattle Company as one of its

(Deposition of Edgar L. Clark.)

members after the sale. I don't know whether the firm of Saunders and Haley retained any interest as a firm after the sale, but I fully believe they did not.

On certain occasions I was called on by Mr. Saunders to make inspections of the conditions of the ranch and the stock and to make reports to him. I think the number of such inspections were two or more. There was no fixed time on which I was to make inspection and report, but merely when Mr. Saunders asked me to do so. [188]

Deposition of David Barney, for the Government.

Counsel for the Government next offered and read in evidence the deposition of DAVID BARNEY, who testified as follows:

My name is David Barney, and I live at Kilgore, Idaho. I am sometimes addressed as Dick Barney. My occupation is ranching. In 1907 I lived at Marysvale, Utah. I am forty-five years of age and my occupation for the past fifteen years has been handling stock and ranching and raising hay. In the year 1907 I was down in the Kaibab country with some men from California,—Mr. Marshall and Mr. Stevenson. There was also a couple of men called Millbanks from Los Angeles. One was named Isaac and the other Nicoll, and they were in company with Marshall and Stevenson. There was also a cook in that party named Burt Yunkin. I first met these people at Marysvale. I was recommended by Saunders and Homer Thompson as a good man to take care of horses and the like of that, and to go

(Deposition of David Barney.)

with them down there. By Saunders, I mean B. F. Saunders, one of the defendants in this case. Homer Thompson lived at Marysvale and did a lot of Saunders' business in the line of loading pipe and salt for the Buckskin, and taking it from the train to the Buckskin Mountain country. I was employed with that party to take care of their horses and haul their cook and provisions. It was about two hundred miles from Marysvale to the Buckskin Mountain ranch, and took us to get down there something like ten or eleven days. We went right along until it come night and then camped, and the next morning we would go on, for about eight days, to reach the Buckskin Mountain ranch.

I never had any conversation with either Mr. Marshall or Mr. Stevenson wherein they disclosed their purpose in going down there.

After we arrived at the Buckskin Mountain country the first point we visited was Jacobs lake. I had a heavy white-top spring wagon; they had another one much heavier. Their outfit came from Salt Lake and they had it brought to Marysvale, and my wagon they met at Marysvale, that made the full camping outfit. They bought their horses at Marysvale and shipped down the rig they rode in from Salt Lake. When the party arrived at Jacobs lake we struck a man by the name of Charles Dimmick, [189] who was Saunders' foreman. They stayed there one night and Dimmick and Stevenson got on horses and rode up there near the Buckskin, over around the ranger's cabin—one of

(Deposition of David Barney.)

the Forest rangers. We stayed at his place one night and the next day went on to Bright Angel ranch. That is close to the brink of the Grand Canyon. We stayed there two days and then came back to the ranger's cabin again and then we went over west to what they called Kane springs. Then I left them there and they went to Lund on the railroad in southern Utah. Those are all the points visited by the party while I was with them. We passed several ranches, I have just mentioned the camping places. That was the only visit I made to the Buckskin Mountain ranch with this party and as nearly as I can recall I have enumerated all the places where the party stopped.

As near as I can recall it was close to the 25th or 26th of August, 1907, when I met this party at Marysvale and went with them to the Buckskin Mountain ranch. We spent five days on the Buckskin Mountain ranch, making these stops I have mentioned, after we arrived at Jacobs lake and before we started for Lund. I was with three of the party—the two Millbanks and Marshall, all of that five days. Stevenson and Dimmick left the party at one time. They rode horses and rode to the different places. Stevenson and Dimmick left the party at one time the way I stated, and Mr. Marshall and the Millbanks and the cook were with me all the time.

When we arrived at Jacobs lake the conversation was about cattle and about where they laid, and Stevenson went with Dimmick to look at them. I

(Deposition of David Barney.)

was asked to go wherever the Millbanks and Marshall went to look around. Their talk was about the cattle, how they intended to handle them. This was Marshall's talk to Millbanks. Of course he talked with Dimmick. They told him he could go right on, his job would stay as long as he wanted to stay and do the same work as for Saunders and Haley. Mr. Marshall said that; he said that just as long as he wanted to stay his wages would go on just the same. [190]

When we went to the Bright Angel ranch I think Dimmick had papers to describe all the other ranches, and of course the cattle, and he showed the papers to Mr. Marshall. I saw Dimmick show the papers to Mr. Marshall. These papers were to represent the claims, I think the different ranches and the like. So far as I gathered from the conversation between Dimmick and Marshall. The papers Dimmick had were the papers that showed title to the property. I saw these papers myself, but I cannot read. These papers were shown by Dimmick to Marshall at different points I have named that I visited with the party, and they went into the matter of the title to the claims there and consulted these papers, and that same procedure occurred when they also visited the Kane springs.

When we visited Jacobs lake, as far as I was able to observe, the place was used for stock-watering purposes and corrals. I didn't see any mining being done there. At the time the Bright Angel ranch was visited I saw just another stock place. There

(Deposition of David Barney.)

was water there, just dug out a little. That is a hard place for water. At Kane springs the water comes right out of a pool there out of a pipe there down to troughs where it is used for watering stock.

I don't remember the name of the Forest ranger whose place our party visited.

In the course of visiting the places I have named we passed something like a dozen watering places or pools that appeared to be devoted to stock watering places. This dozen or so other watering places were in the form of pools that had been worked a little; most of them there were corrals about them and salt troughs.

Q. Now, in the course of these visits to these different places you have mentioned, with this party, did you observe whether or not Mr. Marshall or Mr. Stevenson or the Millbanks, made any notes on the matters that were discussed?

Mr. STEVENS.—Object to that because it already appears from the witness that he couldn't read, and it calls for his conclusions as to what was being done in making notes. [191]

Mr. SHERIDAN.—We will show later that he does know how to read and write a little.

Objection sustained, and counsel for the Government then and there excepted.

(A. Yes, I think Millbanks took a note of every place, and Marshall too.)

WITNESS.—(Continuing:) There were photographs taken by Millbanks. I have some of them myself. If I had them I could show the pictures of

(Deposition of David Barney.)

the cattle and Jacobs lake and the corrals. I think one of the Millbanks sent these photographs to me from Los Angeles.

The party stopped at the Forest ranger's cabin one night going down to the Bright Angel and one night coming back.

Q. I now hand you a photograph, Mr. Barney, and ask you to state whether or not you recognize the person shown on that photograph?

(Photographs marked "Government's Exhibit No. 14," for Identification.)

A. That looks like the ranger.

WITNESS.—(Continuing:) The ranger's cabin was in about the center of the big flat. It is right to the southwest side of the flat towards the upper end. The flat is about five or six miles long, I should judge. It seems like there was one old man there at the cabin with the ranger, and I believe he was there on both occasions that the party stopped there. The ranger had a cabin made out of logs about 16x20. Saunders had a house there too, right by the cabin. There was no one living in the Saunders house when I was there. I saw the inside of it too, and there was a fire-place in one end and there were provisions there. I think it was kind of a headquarters camp.

I have assisted in hauling down shipments of pipe there and other things from Marysvale to the Buckskin Mountains. I have been there when they were loading it lots of times—six or seven years. Anybody they could get to take a load would haul it down

(Deposition of David Barney.)

there. There were tons of salt and a great deal of piping. [192]

I lived at Marysville eight or nine years, and those shipments went on during that period from the town to Saunders' ranch. I was acquainted with the Saunders' men who attended to the hauling to the ranch, and I observed it being billed and weighed out by Saunders' men and billed to the Buckskin Mountain ranch. I had known Mr. Saunders about fifteen years at that time—1907. He sold a pile of cattle and shipped them. This Homer Thompson he kept there to weigh them out and receive the bulls, and I helped take care of the cattle and brand them. So in that way I became familiar with the shipping in of goods and taking out of cattle from the ranch. The first I learned of the deal having been made between Marshall and Stevenson and Saunders was the time I was with the party.

Q. Did you learn anything from the members of the party about whether or not Mr. Saunders retained any interest after the sale to Marshall and Stevenson?

Mr. STEVENSON.—We object to that as hearsay, and as an entirely improper way to prove a conversation.

The COURT.—I think that it too indefinite, I sustain the objection to it.

Mr. SHERIDAN.—Note an exception.

(A. Yes; I understood they left him an interest.)

WITNESS.—(Continuing:) I forgot what interest. Marshall told me. I cannot recall what inter-

(Deposition of David Barney.)

est Mr. Saunders retained after the sale to Marshall and Stevenson, but I did learn from Mr. Marshall that Mr. Saunders did retain an interest after the sale. The way I understood it they wanted him in and gave him an interest and let him hold on just because he was interested in the business or something. That information I obtained from Mr. Marshall himself while with the party.

(The testimony contained in the last paragraph was excluded by the Court under the same objection as to the last question given, and the Government, by its counsel, then and there excepted.)

WITNESS.—(Continuing:) I knew Mr. Saunders fifteen years prior to this visit of the party to the Buckskin Mountain ranch. He bought and sold cattle and sheep. Years ago he used to have sheep there. I think [193] in that way I worked for him. That is how I got acquainted with him first. He used to buy wethers and have them sheared. I never heard of Mr. Saunders being engaged in the mining business on the Buckskin Mountain ranch and never heard of him shipping any ore from that ranch, nor did I ever hear of any person under him shipping ore from the Buckskin Mountain ranch. So far as I know his business was that of sheep and cattle raising.

Mr. SHERIDAN.—We will offer the cross-examination and also the redirect examination of this witness.

(Deposition of David Barney.)

On cross-examination by counsel for the Grand Canyon Cattle Company, the witness testified:

I have lived in Kilgore two years. I left Marysvale three years ago. I was in Marysvale continuously until that time. I cannot recall the day that I went to the Buckskin Mountain ranch with Mr. Marshall and Mr. Stevenson. I think it was in August. There was in this party that I accompanied as a driver, Mr. Marshall, Mr. Stevenson, the two Millbanks, and a cook. The cook rode with me and the four rode to themselves. Mr. Marshall, Mr. Stevenson and the two Millbanks rode by themselves in a heavy spring Studebaker wagon.

I met them at Marysvale on the same day we started; I think between the 24th and 27th of August. We were gone on that trip from the time we left Marysvale until we got back, eighteen days. There were just these two wagons. The party spent two nights at the ranger's cabin. The party camped at night in the cabins anywhere there were cabins. None of the party stopped overnight at any of the ranch houses.

Dimmick was with us at Jacobs lake and stopped over night with us there. The party stayed over night at Jacobs lake the first night they got there.

Q. You spoke of some papers that Mr. Dimmick had with him and said that you understood they were title papers?

Mr. STEVENS.—Objected to as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

(Deposition of David Barney.)

Objection sustained, and counsel for the Government then and [194] there excepted.

(A. Yes.)

The witness then testified as follows: What made me think they were title papers was their talk and I knew they were to make a deal and Dimmick was representing Saunders in it.

To this testimony the Grand Canyon Cattle Company objected as incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

Objection was sustained by the Court, and counsel for the Government then and there excepted.

WITNESS.—(Continuing:) I think they had both maps and sketches there; maps and also some descriptions of the various parts of the ranch.

Q. And you merely supposed that these were title papers? You saw them looking over some papers together?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained, and counsel for the Government then and there excepted.

A. He would say this is such and such a claim, and then he would tell them what it was. He consulted the papers at that time.

WITNESS.—(Continuing:) I have not any positive knowledge that the papers that Dimmick had were title papers, only from their talk. I understood all along it was a trade and cattle deal and it was my impression they were down there on a matter of sale.

Q. And you inferred from that, and from the fact

(Deposition of David Barney.)

that Dimmick had some papers with him, that these papers were title papers?

Objected to on the same ground.

Objection sustained, and counsel for the Government excepted.

(A. Yes, sir.)

Q. And from the additional fact that they referred to them whenever they came to the different claims?

Same objection, ruling, and exception.

(A. Yes, that is correct.) [195]

Q. But in referring to them they did not say they were title papers? You did not hear them say they were title papers?

Same objection, ruling, and exception.

(A. Yes; I think I did.)

WITNESS.—(Continuing:) I think I have photographs of all the main ranches these people were to. I think also one of the next places they came to after they left me.

I never said that I didn't read. I said I didn't read much; I can read a little.

The work I referred to as having been done for Saunders was done on the hiring of me by some of his men at Marysvale, and that covered just odd jobs at different times. I never worked on the Buckskin Mountain ranch. I don't pretend to know all of Mr. Saunders' business interests.

On redirect examination by counsel for the Government, the witness testified:

In going down with that party, staying there and coming back, it consumed altogether eighteen days.

(Deposition of David Barney.)

It took eight days to go down there and I think about four days to come back from where I left them. We spent four days and part of another, I think, at the ranch. I didn't go all the way back to Marysvale with the party. I went to Kane springs and left the party there. When I said eighteen days, I mean to cover the time that we went from Marysvale to Jacobs Lake, the time spent in that vicinity and the time it took us to go back to Kane springs. The party didn't go to Marysvale. They took the train at Lund, and I am not including the time that the party took to go to Lund.

On that trip we camped out all the time until we came to Saunders' ranch at Jacobs lake and when we were inspecting the ranch and going to these different places sometimes we camped out and sometimes we camped in cabins. When I said in my cross-examination that we didn't stop at any of the ranch houses I didn't mean that we didn't stop in the cabins. I meant some of the cabins that were occupied by Mr. Saunders' men. [196]

Testimony of R. E. Geary, for the Government.

Mr. SHERIDAN.—We will now ask that Mr. Geary be sworn in the matter of connecting up those certificates of which we spoke in the Black and Rynders depositions.

R. E. GEARY, a witness on behalf of the Government, having been duly sworn, testified as follows:

I am forty-five years old; reside at Ogden, Utah, and am in the employ of the Forest Service of the United States. I have been in the Forest Service

(Testimony of R. E. Geary.)

four years the 16th day of next March. I am stationed at the present time at Ogden, Utah, and have been stationed there since March 16th, 1912. I am an assistant in the office of lands, and as such I have custody of the records of claims, special uses, water-power, range stations and status on some thirty-two forests, including the Kaibab and the Dixie.

(Witness' attention called to Government's Exhibit "A" attached to deposition of W. A. Black.) I have seen that paper before. I found this Exhibit "A" attached to a letter in the closed file relating to the Kane mill site and lode claims. I have the letter to which the notice was attached, and have other letters relating to it. One of these letters dated December 3, 1906, purporting to be signed by Loren Pratt, Forest Supervisor, was found in the closed files relating to the Kane lode and Kane mill site which are situated in the Kane Canyon in the Kaibab National Forest. The other letter was found in the files of the Forest Supervisor at Knab, Utah. That Supervisor had charge of the entire Kaibab National Forest. I have the custody of the records relating to claims on Kaibab National Forest.

(Examination by Mr. STEVENS.)

Only one of these papers were found by me, the one signed by Mr. Pratt. That was found in the closed files at Ogden, Utah, in the office [197] of lands, Forest Service, Department of Agriculture, and was found by me there. I had nothing to do with the finding of the other. I simply requested that an examination of the files be made by the Forest Super-

(Testimony of R. E. Geary.)

visor and that was one of the letters among others that he found.

(Examination Resumed by Mr. SHERIDAN.)

This letter dated December 3d, 1906, purporting to be signed by Mr. Loren Pratt and addressed to B. F. Saunders, Salt Lake City, Utah, was obtained from Mr. James M. Pelton, Supervisor of the Kaibab National Forest. As his superior officer I asked him to submit copies or originals of all letters which he had in his files relating to the Saunders claims or to any interest which Saunders may have had or the Grand Canyon Cattle Company may have had, and that was one of the letters.

Mr. SHERIDAN.—We now offer both these letters in evidence.

Mr. STEVENS.—I object to that on the ground that no sufficient foundation has been laid, and that they are incompetent, irrelevant and immaterial; they are hearsay and not public records.

The COURT.—With relation to this matter from the Forest Supervisor, is this a copy of the letter, or the original letter?

Mr. SHERIDAN.—I will ask Mr. Geary.

The WITNESS.—It is a carbon copy. It is customary to keep carbon copies of the official business sent out from the Forest service files, and this is from the Forest service files.

Mr. STEVENS.—The objection then is that being a copy it is not the best evidence.

Mr. SHERIDAN.—I will ask a few more questions.

(Testimony of R. E. Geary.)

WITNESS.—(Continuing:) At the time this letter purporting to be signed by Mr. Pratt was written, bearing date December 3d, 1906, there were no district offices as at present, organized in the Forest service organization. Supervisors like those on Kaibab plateau communicated with the Forester in Washington, D. C. [198]

The district offices were organized in 1908 and after that they communicated with the district forester in Ogden, Utah. The records which had been received in Washington prior to the organization of the districts were forwarded to the districts and kept on file. I have no positive knowledge that that particular letter was forwarded in that way, but I found it among the files that I understood had been forwarded from Washington. I have no absolute knowledge it was forwarded.

Only one of these letters came into my possession in the manner I have described. Mr. Pratt, the Forest Supervisor, I think is living at Fredonia, Arizona.

Mr. SHERIDAN.—We offer the letters at this time.

Mr. STEVENS.—Objected to on the ground that no sufficient foundation has been laid, and they are incompetent, irrelevant and immaterial. There is nothing to show that Mr. Saunders knew anything about them or ever received any such letters; they are hearsay and not public records.

The COURT.—I sustain the objection as to both letters.

(Testimony of R. E. Geary.)

Mr. SHERIDAN.—We think the letter from Mr. Pratt to the Forester at Washington, D. C., would be evidence to show that the certificate had been received from Saunders. It is an original.

The COURT.—I reserve my decision on that and will allow you to offer it at a later time; that will apply to both letters. [199]

Testimony of Selden F. Harris, for the Government.

SELDEN F. HARRIS, called as a witness on behalf of the Government, and being duly sworn, testified as follows:

I am thirty-five years of age, and reside at North Yakima, Washington. I was in the service of the United States as Forest ranger and promoted to the position of Forest Supervisor. I entered the Forest service as Forest ranger January first, 1906. In connection with the Dixie Forest, for the first four months of the year and then I was transferred to the Beaver, and afterwards transferred from the Beaver to the Grand Canyon National Forest, now known as the Kaibab National Forest. I assumed charge of the Kaibab National Forest January 25th, 1907. My duties were to oversee the grazing of cattle and their conduct; overseeing and conducting timber sales and cutting all timber in a general way. The grazing of cattle, building of roads, trails, developing under the direction of the Forest Service and officers where it was necessary to develop water for the maintenance of stock grazed upon the respective forests; making examinations and reports upon claims, particularly trespass claims, mineral claims, mill sites, and claims

(Testimony of Selden F. Harris.)

in a general way that may come in contact with the Forest or that are upon Forest lands. In the performing of these duties I traveled extensively over the Kaibab National Forest, then known as the Grand Canyon National Forest. There were range stations maintained there. There was one at the Potosky mine, one at V. T. Park, one at Bright Angel, one at Dry Park, and one at Jump-up. It was part of my duties to visit these stations and I did visit them during the summer months of that year at least once a month. I was there from January 25th until November first, 1907, and I think there were very few points of interest or importance on that forest that I didn't visit probably once and many of them several times. The nearest railroad to this forest is Marysvale, which runs north of the forest at a distance of one hundred fifty or one hundred seventy-five miles. The nearest railroad station is [200] Marysvale. On the south side there is a very limited access to the forest. There are two horse trails and a wagon road from the south. There are so few trails by reason of the presence of the Grand Canyon. The trails are called Bass's Trail, Bright Angel Trail and Lee's Ferry. The most western of these three trails is Bass's trail; on an air-line it would be about thirty miles from that to the Bright Angel and from there to Lee's Ferry about sixty miles on an air-line. Those are the only trails from the south. There are none from the east across the Canyon nor from the west that I know of.

I know a place known as Ryan on that forest. I

(Testimony of Selden F. Harris.)

know a place on the Kaibab National Forest known as V. T. Park. That is about thirty-five miles from Petosky, and about twelve miles from Bright Angel. Ryan was located on the forest a little south and west from Jacobs lake about eight miles. It was between twenty and twenty-five miles from Ryan to Dry Park and from Dry Park to Quaken about nine miles.

I have visited Jacobs lake while I was Forest Supervisor. I never saw any streams running in or out of it. I never saw any mining done there. I know of other claims owned by Mr. Saunders in that part of the country. There was the Kane lode and Kane mill site. I have visited them. On the Kane lode there were two or three tunnels driven into a sandstone dyke. I saw a pipe-line coming from the mouth of the tunnel leading to the Kane ranch. I followed that down to the end. They were piped into troughs or reservoirs. These troughs being located in cattle corrals, which were undoubtedly used for stock purposes. I saw the water running from those pipes into the troughs. I don't know positively any other location claimed by Mr. Saunders within the forest other than Jacobs lode and the one I have just described.

I met the Saunders people while I was on the Forest. I presume I met most all of the employees he had there. I recall Charles Dimmick, Charlie Crosby and Jim Owen. There were many others, in all about forty men. I was acquainted at that time with practically all of them.

I was quite intimately acquainted with Mr. Dim-

(Testimony of Selden F. Harris.)

mick. I think I saw him at least once a month during the ten months I was on the Forest. I had dealings with him on official matters relating to the [201] Forest. I would say that water was not abundant on that Forest. The character of the range in the Forest was very good.

While I was on the Forest as Forest Supervisor I kept a diary and have that diary with me. I recall that I was down on the Kaibab Forest in October, 1907, between the 18th of October and the 24th. At that time I was making what is termed by the Foresters a fall inspection of the range. That was a part of my official duties while I was there. I met quite a number of Saunders' men, all of my rangers and Mr. Stevenson with his party at the V. T. Park. One of my ranger stations was at the V. T. Park. I met Mr. Stevenson by a formal letter of introduction from Ranger Judd, one of my rangers. I recognize Mr. Stevenson now sitting in the courtroom. Mr. Stevenson was at the corral looking over the cattle in a general way and seeing that all the cattle were cropped. They were clipping off a part of the bush of the tail. They were doing that with the Bar Z cattle, which belonged to B. F. Saunders. I know that because the cattle were being grazed under permit by B. F. Saunders, and it was within my jurisdiction to ascertain that fact, and I had a record of that fact.

Mr. Tebho, another member of Mr. Stevenson's party, was also there. He had charge of the books

(Testimony of Selden F. Harris.)

and accounts of different pens of cattle which were being turned over to him, and he was making a record of it. I saw him do that. I was there in my official capacity to see that proper counts were being made and to deliver my personal instructions to my Ranger Judd. It was a part of my duties to attend to the grazing of cattle on that Forest and I was there in connection with my duties. I was checking Judd's count on the cattle and looking over the cattle to see if any stray brands were in that district, and getting a general line on the cattle that were there. I know only by Mr. Saunders' word how many cattle he had on there. I made a count of the cattle I saw there at that time. [202]

While I was engaged in the work of taking this count I had a conversation with Mr. Stevenson.

Q. What was that conversation?

Mr. STEVENS.—That is objected to as incompetent, irrelevant and immaterial, no sufficient foundation laid, and it's not shown that Mr. Stevenson was representing the Grand Canyon Cattle Company, the defendant in this suit, and his statements are not binding upon the defendant.

The COURT.—I sustain the objection as to any conversation between this witness and Mr. Stevenson.

Counsel for the Government excepted to the ruling of the Court, and asked that testimony be taken under Rule 46 of the Rules of Practice for the Courts of Equity of the United States.

Mr. SHERIDAN.—I would like to ask one prelim-

(Testimony of Selden F. Harris.)

inary question, your Honor, before taking the testimony under Rule 46.

The COURT.—You may frame the question to suit yourself.

Q. Mr. Harris, on the occasion of your meeting Mr. Stevenson at the V. T. Park ranch to which you have referred, did you have any conversation with him?

A. I did.

Q. Mr. Harris, do you remember the conversation you had with Mr. Stevenson? A. I do.

Q. Can you state of your own independent memory now what the conversation was?

A. The substance of it, yes, sir.

Q. State what that conversation was in substance, as nearly as you can recall.

Mr. STEVENS.—I object to that on the ground it's incompetent, irrelevant, immaterial, and no authority upon the part of Mr. Stevenson is shown to engage in any conversation with [203] this witness or anyone else so as to bind the Grand Canyon Cattle Company or any other defendant in this action. Moreover, no sufficient foundation is laid for the introduction of the conversation.

The COURT.—The objection is sustained, and the witness will now be permitted to answer the question under Equity Rule 46.

Mr. SHERIDAN.—Note an exception.

(A. During the conversation with Mr. Stevenson upon the branding chute in the corral at the V. T. Park I was frank to inform Mr. Stevenson that certain claims known as the Kane lode, Kane mill site and the Jacobs lode were being held by the Govern-

(Testimony of Selden F. Harris.)

ment as being invalid, and that it was very doubtful in my opinion if patent on the same would ever be issued because reports of all Forest Supervisors showed these claims to have been located to obtain water sources and not for mining purposes, and further than that that these claims were not upon mineral bearing rock in place. I think that was, as near as I can recall, the substance of the conversation at that time.)

Q. Did Mr. Stevenson make any comment after you so informed him?

Mr. STEVENS.—I make the same objection.

The COURT.—The objection is sustained, and the witness will be permitted to answer under Equity Rule 46.

Mr. SHERIDAN.—Please note an exception.

(A. There was no particular comment made, no, sir.)

Q. Did he do anything after you gave him this information?

Mr. STEVENS.—The objection is made upon the same ground, and also upon the ground the question is too indefinite and uncertain and almost inexplicable in its purport.

The COURT.—Objection sustained, and the witness will be permitted to answer under Equity Rule 46. [204]

Mr. SHERIDAN.—Note an exception.

(A. He proceeded along the regular routine of work that was being done with not very much to say. I think it was just about that time that some cattle were let out. Later we resumed our conversation

(Testimony of Selden F. Harris.)

in a more general way, and the conversation was soon changed, there having been a heavy storm coming up from the west, which made a very pretty picture, and he switched off on the conversation about the kodak. He said, "That would make a pretty picture, Harris," and I took a picture at that time.)

Q. You say you returned to your original conversation? Who returned to that original conversation first after you gave this information to Mr. Stevenson?

Mr. STEVENS.—I want the same objection to apply to all these questions.

The COURT.—It may be applied to all of it.

Mr. SHERIDAN.—And we preserve an exception. (A. I did.)

On cross-examination by Mr. STEVENS the witness testified:

At the time I have been speaking of when I went down to the corral I went on the 14th of October. I came from Ryan City, I believe. On the 18th I left Kanab for Ryan City; on the 19th Ryan City to V. T. Park, and when I saw Mr. Stevenson there at the corral, if I remember rightly it was when I got in that evening. It was probably after six o'clock—I don't know that I met Mr. Stevenson that night. I saw him the 20th, in the morning. I was there at the V. T. Park on the day of the 20th. I was there on the 20th and 21st, and left on the 22d. Then I went to Bright Angel and from there returned to the V. T. Park and left V. T. Park [205] for

(Testimony of Selden F. Harris.)

Ryan on the 23d. I went back to V. T. Park on the 22d. I was there the second time on the 22d and 23d. I got there along late in the evening of the 22d and left in the early morning of the 23d, some time in the forenoon. We broke camp on the morning of the 23d.

I don't know that I saw Mr. Stevenson on my return; the time I saw him on the 20th at the chutes is the only time that I know of seeing him. No, he was there on the 23d also, because he assisted us in building a cattle corral on the 23d. Those are the only two times I can recall that I saw him on this trip, the 20th and 21st. I don't recall that I saw him on the return trip; I will not say that I didn't but I have no recollection of it.

On the 23d I went to Ryan City and from Ryan City I went to Kanab—my headquarters were at Kanab, and I stayed there the remainder of my time at the Grand Canyon. The last time I saw Mr. Stevenson, my recollection is, October 21st, 1907, until I saw him here in the courtroom. I wouldn't say positively that I had ever seen him before I was introduced to him on the morning of the 20th. If my memory is correct I met him at V. T. Park. I saw this party once previous to that time, but I don't care to make a statement when. I saw him there the first or second trip they were there. I can recall seeing them, but the time I do not know. I was not introduced to him then, just saw him, and I didn't know who they were except somebody told me.

[206]

Testimony of R. E. Geary (Recalled), for the Government.

R. E. GEARY, recalled on behalf of the Government, testified as follows:

I have already testified that I am at present serving in the District Forestry office at Ogden, Utah.

(Counsel hands paper to witness.) That paper came from the official files in my office. If I may I would like to make a short explanation as to our method. The District office is divided into branches of grazing lands, operations, silviculture, etc.; and all correspondence referring to the different branches is filed in that particular office. And this letter you have handed me was found among the files of the office of grazing, in the office of the District Forestry at Ogden, Utah.

Mr. SHERIDAN.—We will now offer this letter in evidence as Government's Exhibit No. 28-P.

Mr. STEVENS.—We object to the letter on the ground it is immaterial and irrelevant.

THE COURT.—Well, I will admit the letter for the purpose of tending to show the agency, but unless further evidence is introduced I shall hold it is not sufficient. It may be admitted.

Mr. STEVENS.—Exception.

Letter admitted in evidence and marked Government's Exhibit 28-P.

Q. I now hand you another paper and ask you where it came from, if you know?

A. It came from the same source as the other, from the grazing files.

(Testimony of R. E. Geary.)

Mr. SHERIDAN.—We now offer this communication and its attached communication in evidence as Government's Exhibit 29-P.

Mr. STEVENS.—Objected to as immaterial and irrelevant and not tending to establish the agency of Mr. Stevenson.

Objection overruled, and counsel for the Grand Canyon Cattle Company then and there excepted. [207]

Paper admitted in evidence as Government's Exhibit No. 29-P.

Mr. SHERIDAN.—We offer in evidence a notice of water location made by B. F. Saunders August first, 1901, covering the House Rock Tract, Two-mile tract and Jacobs pool, as Government's Exhibit No. 30-P.

Mr. STEVENSON.—Objected to as irrelevant and immaterial.

Objection overruled, and counsel for the Grand Canyon Cattle Company then and there excepted.

Notice of water location admitted in evidence and marked "Government's Exhibit No. 30-P."

Mr. SHERIDAN.—The next paper we offer is a deed bearing date February 24th, 1899, between A. L. Fotheringham and B. Gillies, parties of the first part, and T. S. Kingsberry, party of the second part, recorded at the request of B. F. Saunders August 1st, 1901, as Government's Exhibit No. 31-P.

Mr. STEVENS.—Objected to as irrelevant and immaterial.

The court.—For what purpose is the offer?

(Testimony of R. E. Geary.)

Mr. SHERIDAN.—To connect up the chain of title between Saunders and the Grand Canyon Cattle Company, and this, with other papers we will introduce will show that all these matters must have inevitably been brought to the attention of the Grand Canyon Cattle Company.

The COURT.—The objection is overruled on the affirmation of counsel that they expect to show that the title past to the defendant company.

Deed admitted in evidence and marked “Government’s Exhibit No. 31-P.”

Mr. SHERIDAN.—We now offer a deed dated August 5th, 1899 between Thomas S. Kingsberry, and Ora Haley, and B. F. Saunders, conveying certain interests to Saunders and Haley.

Same objection, ruling and exception.

Deed admitted in evidence and marked “Government’s Exhibit No. 32-P.”

Mr. SHERIDAN.—The next instrument is a deed dated December 17, 1900, [208] between Hyrum S. Shunway, and B. F. Saunders, conveying certain personal property in the part of lands that had been heretofore described to Saunders.

Mr. STEVENS.—Objected to as irrelevant and immaterial.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Deed admitted in evidence and marked “Government’s Exhibit No. 33-P.”

Mr. SHERIDAN.—The next instrument is a deed dated December 2d, 1907, and executed December

(Testimony of R. E. Geary.)

5th, 1907, between B. F. Saunders and Ora Haley to the Grand Canyon Cattle Company conveying all the cattle branded Bar Z to the Grand Canyon Cattle Company.

Objected to as immaterial and irrelevant.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Deed admitted in evidence and marked "Government's Exhibit No. 34-P."

Mr. SHERIDAN.—The next deed which we offer is dated December 2d, 1907, from Ora Haley and B. F. Saunders to the Grand Canyon Cattle Company, conveying personal property, pipe-lines, fences, corrals and other matters referred to in the testimony.

Objected to as irrelevant and immaterial.

Objection overruled and defendant, Grand Canyon Cattle Company, excepted.

Deed admitted in evidence and marked "Government's Exhibit No. 35-P."

Mr. SHERIDAN.—The next instrument is a deed dated December 2d, 1907, executed December 5th, 1907, between Saunders and Haley and the Grand Canyon Cattle Company, conveying the interests of Saunders and Haley in nine lieu selections or scrip locations referred to in the testimony. [209]

Objected to as immaterial and irrelevant.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Deed admitted in evidence and marked "Government's Exhibit 36-P."

(Testimony of R. E. Geary.)

Mr. SHERIDAN.—The next instrument is a deed, dated December 2d, 1907, executed December 5th, 1907, between Saunders and Haley and Grand Canyon Cattle Company, conveying certain unpatented mining claims and water rights.

Objected to as immaterial and irrelevant.

Objection overruled, and defendant Grand Canyon Cattle Company, excepted.

Deed admitted in evidence and marked "Government's Exhibit No. 37-P."

Mr. SHERIDAN.—The next instrument is a deed dated December 2d, 1907, executed December 5th, 1907, between B. F. Saunders and the Grand Canyon Cattle Company, conveying the four patented mineral claims, the Emmett lode, Jacobs lode, and Sunset lode and mill site and the Noon Day lode.

Deed admitted in evidence and marked "Government's Exhibit No. 38-P."

Mr. SHERIDAN.—The next instrument is a mortgage dated December 2d, 1907, executed December 28th, 1907, between the Grand Canyon Cattle Company and B. F. Saunders.

Mortgage admitted in evidence and marked "Government's Exhibit No. 39-P."

Mr. SHERIDAN.—The next instrument is a release of the mortgage just introduced, signed by Ora Haley, and dated June 10th, 1909.

Release of mortgage admitted in evidence, marked "Government's Exhibit No. 40-P."

Mr. SHERIDAN.—The next instrument we offer in evidence is a certified copy of the decision of the

(Testimony of R. E. Geary.)

Commissioner of General [210] Land Office, cancelling the Crane Lode location, concerning which testimony has already been introduced.

Mr. STEVENS.—Objected to as irrelevant and incompetent; no sufficient foundation laid, and it is not shown that the Commissioner had any jurisdiction in the premises of the defendant or of the subject matter.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Certified copy of the Decision of the Commissioner of the General Land Office admitted in evidence, and marked "Government's Exhibit No. 41-P."

The COURT.—Are there others of like character?

Mr. SHERIDAN.—The others are of like character.

Mr. STEVENS.—I suppose the the same objection and exception will apply to the rest of them?

The COURT.—Yes, and the same ruling. They are admitted, and the exception.

The Government next offered in evidence certified copy of the Decision of the Commissioner of the General Land Office cancelling the Frank lode.

Said certified copy admitted in evidence and marked "Government's Exhibit No. 42-P."

The Government next offered in evidence a certified copy of the Decision of the Commissioner of the General Land Office, cancelling the Noonday lode.

Said certified copy admitted in evidence and marked "Government's Exhibit No. 43-P."

The Government next offered in evidence a certi-

(Testimony of R. E. Geary.)

fied copy of the Decision of the Commissioner of the General Land Office cancelling the Snipe lode.

Said certified copy admitted in evidence and marked "Government's Exhibit No. 44-P." [211]

The Government next offered in evidence a certified copy of the Decision of the Commissioner of the General Land Office cancelling the Alaska mill site location.

Said certified copy received in evidence and marked "Government's Exhibit No. 45-P."

The Government next offered in evidence a certified copy of the Decision of the Commissioner of the General Land Office cancelling the Alaska lode.

Said certified copy received in evidence and marked "Government's Exhibit No. 46-P."

The COURT.—Let the record show that all these are admitted subject to the objections made to the first one.

Mr. SHERIDAN.—The next instrument we offer is a certified copy of the original record of the General Land Office relating to the following lieu selections already mentioned in the testimony: House Rock tract,, Two-mile tract, One-mile tract, Canaan Reservoir.

Objected to as immaterial and irrelevant.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Certified copy of the records of the General Land Office admitted in evidence and marked "Government's Exhibit No. 47-P."

The next instrument is a certified copy of the origi-

(Testimony of R. E. Geary.)

nal records of the General Land Office relating to North Lake tract, Middle and South Lake tract, Jacobs Pools tract, and Soap Creek tract, being lieu selections already referred to in the testimony.

Same objection, ruling and exception.

Mr. TULLER.—I suppose it's generally understood that our objection to other claims applies to these as well as the other testimony.

The COURT.—Yes, it is so understood.

Mr. TULLER.—Note the exception.

Said certified copy of the records of the General Land Office admitted in evidence and marked "Government's Exhibit No. [212] 48-P."

Mr. SHERIDAN.—The next instrument we offer in evidence is certified copy of Articles of Incorporation of the Grand Canyon Cattle Company.

Articles of Incorporation admitted in evidence and marked "Government's Exhibit No. 49-P."

On inquiry from the Court as to the dates of the patent to the claims involved in this suit, it was stated by counsel that the Jacobs lode was patented March 17th, 1907; the Noonday lode January 22d, 1907; the Sunset lode June 9th, 1906; the Sunset mill site, June 9th, 1906, and the Emmett lode October 20th, 1906.

Testimony of Thomas F. Weedon, for the Government

THOMAS F. WEEDON, a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is Thomas F. Weedon, and I am the Reg-

(Testimony of Thomas F. Weedon.)

istrar of the Land Office at Phoenix, Arizona; as such I have in my custody the records of the land office in that state. Among the records I have a letter from the Commissioner of the General Land Office, dated April 18th, 1910, signed by S. V. Proudfit, Assistant Commissioner of the General Land Office.

Mr. SHERIDAN.—We offer this letter in evidence

Objected to on the ground it is incompetent, irrelevant, immaterial and that there is no jurisdiction shown of the defendant or of the subject matter of Mr. Saunders.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Letter received in evidence and marked "Government's Exhibit No. 50-P." [213]

**Exhibit No. 50-P—Letter, Dated April 18, 1910, to
Commissioner of General Land Office from S. V.
Proudfit.**

"DEPARTMENT OF THE INTERIOR, GEN-
ERAL LAND OFFICE, WASHINGTON, D. C.

April 8th, 1910.

UNITED STATES,

vs.

B. F. SAUNDERS,

Involving the Kane Lode and Kane Millsite, Mineral Entry #88, Survey 2119 A. & B. Affirming decision, cancelling entry and closing case.

Registrar & Receiver,
Phoenix, Arizona.

Sirs:

December 19th, 1905, B. F. Saunders made mineral entry #88 for the Kane Lode and Kane Millsite; Survey #2119 A. & B., situated on unsurveyed lands in Township 36 North, Range 3 east of the Gila and Salt River Base and Meridian, Warm Springs Mining District, Coconino County, Arizona, and within the Kaibab National Forest.

By office letter "P" of December 6th, 1907, you were directed to issue notice, under circular of November 25th, 1907, of charges preferred by a Forest Officer against the entry, the charges being:

1. That the land embraced in the lode claim is non-mineral in character.

2. That the development work has been done in such a manner that it plainly shows that they have been working to develop water and not mineral.

June 14, 1909, you transmitted registry return receipt showing service of notice of said charges December 18, 1907, and you reported that claimant had taken no action.

By office letter of August 24th, 1909, you were directed to render your decision on the record, and to notify the defendant thereof as provided by paragraph 12 of the circular of November 25th, 1907.

October 19th, 1909, you make report that on September 8, 1909, you rendered your joint decision

(Testimony of T. C. Hoyt.)

sustaining the charges and recommending that the entry be cancelled, of which the defendant was duly notified, [214] and has failed to appeal. Evidence of service consists of registry return receipt, dated December 9, 1909, and signed by J. M. Ross, attorney for the defendant.

Under Rule 46, Rules of Practice, said decision has become final as to the facts, and none of the reasons given in the said rule for disturbing the same appear. Said decision is accordingly affirmed, and said entry is hereby cancelled. So note your records and advise claimant.

Very respectfully,

S. V. PROUDFIT,

Assistant Commissioner.

BOARD OF LAW REVIEW,

By W. B. NEWMAN."

Testimony of T. C. Hoyt, for the Government.

T. C. HOYT, a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is T. C. Hoyt; I am forty years old and I reside at Ogden, Utah. I am the Assistant District Forester in the United States Forest Service, Fourth District, with headquarters at Ogden. The Fourth District has within its jurisdiction the Kaibab National Forest.

I was born at Mt. Carmel, Kane County, Utah. That is about fifty miles from Jacobs Lake. I have visited the Buckskin Mountain country and the Buckskin Mountain ranch very frequently. My first trip to the Buckskin Mountain country was in the

(Testimony of T. C. Hoyt.)

year 1888. A foster brother of mine—a boy raised in our family, was the foreman at that time of the O. U. O. Company, and my first visit was with him, and I was on the mountain and in House Rock Valley about two weeks at that time. My next trip to the Buckskin Mountain was the following year. I don't recall that I was there in 1890 for sure. Very likely I was, because I went back and forth frequently with my brother. Three years after my first visit I began to ride occasionally in the summer-time when out of school, as a ranch hand [215] for the O. U. O. Company at first. Later for Mr. Lamb who owned cattle there, and later for the V. T. Company. The O. U. O. Company were in the cattle business. I was there practically every year from 1888 to 1905. Left in November, 1905, and was not there again until the summer of 1910. During the period from 1888 to 1905 I was riding the range and among other people I rode for the V. T. Company. They ranged their cattle all over the Buckskin Mountain country, generally in House Rock Valley and in the sand hills to the east. I became familiar with the watering places. Water was plentiful along the south end of the Kaibab plateau, but very scarce along the top of the plateau proper and along the north end of the east side, it was plentiful along the south. By plentiful, I mean there was plenty of water for stock. There were not more than one or two running streams on the south and quite close to the Grand Canyon, and what is known as the Basin, Milk Creek is one of them.

(Testimony of T. C. Hoyt.)

Ordinarily they may be within a half mile of each other, and at times when the water is high they become common. Ordinarily one could consider Milk Creek as being in the Basin, and Basin Creek proper also in the Basin. That is on what is known as the Buckskin Mountain ranch on the southern part of the ranch. It was within the ranch subsequently occupied by Saunders. On the west side of the mountain Big Springs run a little, about half a mile. Those were all the running streams that I know of except in the early spring there would be other water. At V. T. Park there were springs on the south end in the canyons leading into the Grand Canyon, but they were in the form of lakes, small ponds. I am familiar with the lakes on the Buckskin Mountain and vicinity. The largest one is probably one hundred fifty to two hundred yards across and very shallow. It was considered on the mountain a first-class summer range when not overgrazed.

House Rock Valley is considered, and according to my experience, is one of the best winter ranges that I know of.

While I was in that part of the country I became acquainted with Saunders' ranch foreman and hands. I knew Charles Dimmick after I was on the mountain as a cattle man. I first knew of his being on the mountain in 1904. I first recall meeting him personally at that time. He was then in charge for B. F. Saunders of the ranch. [216]

I became acquainted with the four patented

(Testimony of T. C. Hoyt.)

claims involved in this suit, namely: The Jacobs lode, Emmett lode, Sunset lode and Noonday lode. I first became acquainted with the land they covered, with the Jacobs lode and the Noonday lode in 1888. It was then called Jacobs lake, and subsequently covered by Jacobs lode in the official records. There was a direct road to the mountains passing Jacobs lode at that time. The direct road and most common road in that part of the country went directly from the town to the northwest to Jacobs lode. Any other road that came up came up what is known as Warm Springs Canyon, led past the lake within a short distance, and the lake was the general watering place when I first went down there between and Three Lakes, the next one directly on the road.

The distance from Fredonia to Jacobs lake is about twenty-five or thirty miles, and between Fredonia and the end of the railroad the nearest point on the railroad is about one hundred and thirty miles.

Bright Angel is the name applied to a creek that runs down what is known as the Bright Angel canyon on the south of the Buckskin plateau to the west of Greenland point. The term is also applied to a spring as being a spring in the head of Bright Angel canyon proper. It is near the Grand Canyon. The Bright Angel ranch headquarters is right on the edge of the Bright Angel canyon which is a part of the Grand Canyon, and it is a pretty good day's ride on horseback from Jacobs lake, I should judge about thirty miles.

The Kane ranch is on the east side of the Buck-

(Testimony of T. C. Hoyt.)

skin Mountain, situated at the mouth of the canyon, leading from Buckskin Mountain proper. It is about thirty miles from Jacobs lake, the ordinary way of travel, and there is a road connecting Jacobs lake and Kane. I know the names of other watering places than the Kane ranch and this Bright Angel spring. On the mountain there is Three Lakes, Frank's Lake, Mile-and-a-half Lake, East Lake, Snip Lake, Crane Lake, some little unnamed lakes east of Pleasant Valley, Ochre Lake, Dry Park Lake, several unnamed lakes in the V. T. Park proper; and then there is a spring on the extreme south known as Cliff Spring. [217]

Off the mountain there was Two-mile spring, One-mile spring, House Rock spring and the Pools spring. In my day, when I was working there, that included several springs.

I am familiar with the particular piece of ground covered by the four patented claims involved in this suit. I saw all but the Emmett and Sunset in 1904. That is, I saw the Noonday and the Jacobs and the Sunset mill site. On the Jacobs lode after it was I saw a mill there with all the adjuncts and a small house and storehouse and fences around the lake, and cattle corrals including branding chutes and brands, and some stables. I never saw anything representing mining, and never saw any mining being done. In 1904 I saw about the Jacobs lake a small cut just to the northwest of the lake a short distance. I never saw anything in the nature of a shaft. I saw wells around the lake. These wells

(Testimony of T. C. Hoyt.)

—it was the custom to dig just away from the margin of the lake a short distance where the waters could accumulate, and at times when it was badly stirred up in the lake the horses and work stock would water from these wells. I have seen as high as four of these wells there at a time. I never saw one in the center of the lake.

I saw four other wells around there than those I have described. They were simply excavations in the soil on the margin of the lake. Some of them were timbered and some, if they were not too deep, were not timbered at all. I refer to them as wells, the main reason was the condition of the water in the lakes not being fit to use because it was open to cattle, and cattle waded in it; moreover cattle were held in enclosures that surrounded the lake.

I also saw what appeared to be the top of a well cropping out and the windlass frame or the platform that was fitted up in the lake.

I have seen the Emmett lode and I recall what appeared to be a long trench cut in the bottom of the wash and timbered on the sides and on top and covered over, and at the extreme end next to the higher ground it went into the rock slightly and it contained in it iron-water piping. [218] There was a little stream of water running into this covered trench, and it went into a perforated pipe that stood vertical. That perforated pipe went into the ground, but in the wash below we could see the pipe-line leading down the draw below. I didn't follow that pipe-line all the way, but I know where the

(Testimony of T. C. Hoyt.)

water is utilized below, where it empties into the stock tanks. It was down in the bad lands below the pool on the road leading from House Rock Valley to Lee's Ferry. It was used for stock-watering purposes.

I have seen the Sunset lode and mill site; as I recall now a trench—that is, an excavation, in the nature of a trench leading to a sort of tunnel that went into a hill. I didn't keep any figures of dimensions, but there was a tunnel there and water in this tunnel, and some perforated vertical pipe into which this water emptied. I didn't observe where the water was conducted, only that I saw exposed piping below the tunnel, piping which was just for piping water and leading down the draw or ravine. I followed that pipe down to where it apparently joined the pipe coming from the Emmett lode of which I have spoken.

I know of the Sunset mill site also. It is located probably a half a mile, perhaps a little over a half a mile from the Sunset lode over a sort of sandy, rocky bed. It is on the opposite side of the bench from the lode. The Sunset is down in a rocky gulch; that is, the tunnels are, and it is ledgy towards the northwest towards the Sunset mill site. Then you go towards a sandy bench and over it and down off this bench and come to this Sunset mill site in a similar canyon. At the Sunset mill site a trench had been run in the bottom of the ravine and into a sort of a timbered creek which was covered over at that time from which water was issuing. There was

(Testimony of T. C. Hoyt.)

no other development that I saw there at the Sunset. There was perforated pipe as in the other tunnels I have mentioned, a vertical piece of pipe perforated, into which the water was flowing. [219]

At the Sunset mill site below in the wash we discovered uncovered piping such as used for piping water, leading directly toward the tunnel about which I have spoken. That is, over to and towards the flats below. We followed it down as well as we could from surface indications. It went down to what we speak of as the Pool, and a little below the Pool on a sandy bed there where there was a reservoir and stock tank.

Referring to the character of the country lying between the Sunset lode and the Sunset mill site, there was a sandy hill in between them. There was no road over there. I remember it would be impossible to travel from the Sunset lode to this Sunset mill site with a wagon because of the ledges on either side of the canyon and because of the boulders and washed-out condition of the ravine below. When I say ledges I mean rock cliffs.

I saw the Noonday lode after it was located. The Noonday lode lies in the same canyon as what we speak of as the One-mile, being a little ways north of House Rock. The Noonday lode lies right in the head of this One-mile canyon, and covers the rocky ledges there. The improvements on that consisted of a couple of tunnels, one above the other. The upper tunnel was right in the wall of the red sand rock ledge, and then just below it the tunnel started

(Testimony of T. C. Hoyt.)

into the earth there and came into some red rocky formation as was shown in the upper tunnel. There would not be more than somewhere from ten to twelve, possibly twenty or thirty feet of tunneling there. The upper tunnel had the same perforated vertical pipe. I am not sure but I think in that instance the pipe was laying down on the solid rock. Just below the mouth of this tunnel we could see exposed pipe going down to the rocks leading in the direction of the lower tunnel. In the lower tunnel we could see the end of this same pipe and water was dripping into the lower tunnel from the upper tunnel from this pipe. The water then went into the perforated pipe going into the canyon proper, just a few rods below One-mile spring. It apparently from surface indications joined the pipe leading from One-mile spring. [220] The surface indications showed that it led down to the south and went down over the ledge. That pipe-line led directly to what is known as House Rock.

I have testified the Sunset mill site was over a ledge that was impassable by a wagon to the Sunset lode. The character of the ground in the opposite direction from the Sunset lode was rocky cliff, red sand rock cliff directly to the east, and to the south a red sand and rock canyon. I never saw it when it would be passable with a wagon.

I observed these conditions I have described on the Noonday lode in 1904 and 1905, and again in 1910. The other patented claims including the mill site I saw in 1905, but I am not sure of 1904. I was

(Testimony of T. C. Hoyt.)

well acquainted with them for years before 1904.

As far as the improvements at the Jacobs lake were concerned they were various at different times I was there. The first time I saw Jacobs Pool was about 1888. It was simply a lake and a fence around the lake and a cattle corral on the west of the lake and a little further away in the timber was what we called the sheep corral. There was a remnant of a cow pen only there at that time. There were wells on the margin of the lake when I first went there in 1888 and for all time when I was there. I have used the water out of these wells myself—the first time I was there, and practically every occasion I was there. That was how we got drinking water. I have seen them when they were pretty near only mud holes.

I recall having seen the ground covered by the Emmett lode prior to 1905. I knew the Emmett, the spring now covered by the Emmett lode, before it was developed at all, when it was simply a little seep there, and later when it was dug out and merely a little pool, and later when there was probably twenty or thirty feet of pipe and a board water trough there. The first time that I can recall that I observed what was the Emmett lode as a watering place was about 1890. It might have been before or during that year or the year after. I didn't see any actual development on the Emmett Spring until about 1900. At that time they just scraped out the bottom of the wash. I didn't notice any pipping at that time. I noticed [221] between

(Testimony of T. C. Hoyt.)

that time and the first of January, 1904, if I was there in 1904, the next time I saw it I saw it when there was only about thirty feet of pipe there. I saw this thirty feet of piping about 1900; it might have been 1901. I am certain it was before 1904. That pipe led about thirty feet to a watering trough.

I didn't know the Sunset lode to be developed as a watering place or actually used as a watering place at all. During my day it was up the gulch too far. That is when I was working on the ranch there. I didn't observe it actually as a watering place there until 1910. I knew of the seep up there and scooped it out with my hands and drank there myself, but never knew it as a stock watering place.

The conditions I have described about pipe in the Sunset lode I first saw in 1910. If I said 1905 I confused it with a later visit. With reference to the mill site the water was developed in 1910. Of course I knew of the seep before that. I couldn't fix the date when I first observed either the Sunset lode or Sunset mill site as seep, but it was during my service on the ranch in 1889 or 1890, and from that time on I knew it as a seep until I saw it developed in 1910.

I don't think I saw the Noonday as a watering place at all independent of One-mile. I didn't know there was water there covered by the Noonday lode until after that tunneling, and I first saw the tunnelling in the Noonday lode in 1904 or 1905. I am satisfied I was there in 1905, and I think in 1904. The improvements I have described were the only

(Testimony of T. C. Hoyt.)

improvements that I saw at those four places.

I didn't know Mr. Saunders to be in the cattle business on the Buckskin Mountain at all until about 1901, when I first heard of him. I didn't know him to be engaged in any other business besides the cattle business from 1901 until the time of the Grand Canyon Cattle Company. I never knew of the Saunders people doing any mining on the Buckskin Mountain. [222]

I know of six of the unpatented mineral claims claimed by Saunders. There was the Alaska lode, Alaska mill site, Noonday lode, Snipe lode, Frank lode and Crane lode. They are practically square on top of the plateau.

Mr. STEVENS.—I suppose it may be understood that the objection we have made applies to all of this?

The COURT.—Yes.

WITNESS.—(Continuing:) All of these unpatented mining claims had water in their boundaries in the form of small ponds. They were on the Forest Reserve. After I knew these unpatented mining claims as locations I saw no improvements there but corrals and cow pens and the lakes in most instances were fenced. Fences entirely around them. Prior to the time of the filing of locations on them they had the lakes fenced up, but they were not maintained during the time I worked on the ranch; they went into disuse. I never observed any mining done on any of these unpatented mineral locations. I know they were located in the name of

(Testimony of T. C. Hoyt.)

B. F. Saunders, but I don't know who placed the location notices on them.

With reference to the Coconino and Petosky mines, the Petosky property lies southeast of Jacobs lake and across what is known as Warm Springs canyon. I should judge it's in the neighborhood of a couple of miles from the Jacobs lake to the Petosky, and the Coconino property lies directly west of the Jacobs lake. The claims that I know of are between a half and three-quarters of a mile west of Jacobs lake. I cannot definitely remember when I first discovered any mining being done on either the Petosky or Coconino properties. The Petoskies were mining in there about 1895, not as the Petosky Company, but they were being mined by some one. The Coconino was a little later so far as I know. There were lots of prospecting going on there in 1896 and 1897. I was there then and I saw people carrying on prospecting there.

I have seen as high as twenty-five or thirty of these prospectors camping at the Jacobs lake. There was a little shallow lake on the Petosky property, and about a couple of miles southwest of Jacobs lake. The nearest of the claims was a half or three-quarters of a mile. I [223] have seen the miners whom I saw at Jacobs lake have in their possession copper rock at Jacobs lake. All I know was that the men down at their camp had copper ore in their boxes at the camp, and then I saw them carrying ore and at camp exhibiting the latest show-

(Testimony of T. C. Hoyt.)

ing from the work on their claims. They were working their claims to the west of Jacobs lake in what later became the Coconino property.

Testimony of B. L. Wheeler, for the Government.

B. L. WHEELER, a witness on behalf of the Government, being first duly sworn, testified as follows:

My name is B. L. Wheeler; my age is thirty-two years; mining engineer by profession, and my residence is Washington, D. C. My technical qualifications in mining engineering are that I am a graduate of the Columbia School of Mines of New York, from which university I hold the degree of Engineer of Mines. I have had about ten years' experience since graduation in general engineering work. My present position is mineral examiner for the Forest Service of the United States, in which work I have been for the last six and a half years.

I examined these four claims in question in company with mineral inspector W. L. Walker, and Assistant District Forester T. C. Hoyt, and part of the time in company with Forest Ranger Scott Brown. This was during the month of October, 1910. I was not with Mr. Walker on the 1908 visit. I didn't examine these four claims when they were examined prior to patent. I don't know that any one examined them for the Government prior to the patent. It was not the practice at that time.

Mr. Walker at that time held the position of Mineral Inspector of the General Land Office and I ac-

(Testimony of B. L. Wheeler.)

accompanied him on that entire inspection in 1910. We were together on the Buckskin Mountain for about two weeks or more. I took a number of photographs in the course of that examination.

(Counsel hands photograph to witness.) That was one of the photographs taken. That was taken by myself during the examination of the [224] unpatented Noonday claim covering what is known as East lake. The writing below the photograph I put in myself.

Mr. SHERIDAN.—We now offer this in evidence as Government's Exhibit No. 50-P.

Mr. STEVENS.—We have no objection, except a general one, and the objection that no testimony is proper as to the examination made in 1910.

Objection overruled, and counsel for the Grand Canyon Cattle Company excepted.

Mr. TULLER.—I understand that there are several of these photographs. May the same objection, ruling and exception be considered to all of them?

The COURT.—Yes.

Photograph received in evidence and marked "Government's Exhibit No. 50-P."

Counsel for the Government handed six additional photographs to the witness.

WITNESS.—(Continuing:) I also took these six photographs. The first one, Exhibit 51-P, is a picture of the Crane lode, covering Crane lake; the second, Exhibit 52-P, is of the Snipe lode, covering the Snipe lake; the third, 53-P, is of the patented Jacobs lode claim, covering Jacobs lake, and on that

(Testimony of B. L. Wheeler.)

photograph there are marked at the bottom the location of two of the workings. The next photograph, 54-P, is a picture of the cut on Jacobs lode at the alleged point of discovery; the next photograph, 55-P, is of the patented Emmett lode claim, showing the mouth of the so-called tunnel on that claim as returned in the field-notes of the patent survey, and the final photograph, 56-P, is a panorama showing the Noonday lode at one end, and the other, the adjacent One-mile lieu selection showing the character of the land. The notations in writing on the photographs are merely explanatory notes put in by myself.

The Government then offered the six photographs in evidence. [225]

Photographs admitted in evidence and marked "Government's Exhibits 51-P, 52-P, 53-P, 54-P, 55-P, 56-P," respectively.

WITNESS.—(Continuing:) When I made this examination in company with Mr. Walker in 1910, I spent parts of two days on the Jacobs lode claim with Mr. Walker and Mr. Hoyt, and went to all of the patented survey corners to see that the claims was definitely located. I examined all parts of the claim with regard to its mineral or nonmineral character, and particularly the cut at the alleged discovery point. The general formation of the claim is limestone or quartzite country rock, and at no point, did I find any mineral on that claim. Particular attention was given to the discovery cut, and the sides were dug into and minutely examined.

(Testimony of B. L. Wheeler.)

There is not the slightest indication of mineral in that cut. The other two improvements were found, —one is situated in the center of the pond and is shown in the picture. The other improvement, returned as a shaft in the survey notes, was found to be an excavation or well at the edge of the lake, mostly caved in. This was also examined, but no indications of mineral were found thereon. The lake was surrounded by a very excellent fence; there was a sawmill there on the claim and several buildings and a number of corrals and cattle chutes for branding and separating stock.

The next patented claim examined, which is off the forest, was the Noonday lode, in One-mile canyon. This claim was located by the patent survey notes and plat, and a tie was also run between it and the corner of the adjacent lieu selection. They are only about 1200 feet apart. The claim is situated near the head of One-mile canyon, and covers a very steep, horizontal, sandstone bed, locally known in that country as the Vermillion Cliffs. This formation extends over a great many miles of country. The two tunnels specified in the cuts were found, and very carefully measured and examined. Briefly, they were found to be in [226] sandstone country rock; the lower tunnel was found to be three feet wide, five feet high, and sixty-six feet long. Water was dripping in this tunnel from a pipe, which came through the roof and which was traced to the upper tunnel. Twenty-five feet from the first tunnel, there was found a perforated pipe from which the water

(Testimony of B. L. Wheeler.)

was drained off from the tunnel. The upper tunnel was found to contain a similar pipe running through the floor leading into the lower tunnel. This was traced down the canyon over the sandstone ledges and joins the piping from the spring on the Noonday lieu selection. The material in both those tunnels was identical, the red sandstone country rock. There was no indication of mineral whatever in either of these workings. The discovery point was found being merely a rock monument near the mouth of one of the tunnels,—one of the sandstone ledges. No indications of minerals existed there, and as far as can be determined, on the other claims.

The Sunset mill site, which was about fifteen miles from that claim was examined next, that is mentioning the patented claims; the other examinations were made in between. This claim lays about 1500 feet from the Jacobs Pools lieu selection tract. It lays on a rather rough ground, and covers the gulch bottom, in the bottom of which there is an excavation returned in the field-notes as a tunnel, but which is more of an open cut covered over, and sort of artificially made into a tunnel. This tunnel had two upright pipes in the bottom to collect the water and this pipe-line was found to lead down the gulch and join the pipe-line from the Jacobs lieu selection tract. It was partly filled with water. It was entirely in sand and the surface material from the wash. Inside the tunnel was another cut, either made naturally by the wash waters in the gulch, or else excavated by hand to carry off the wash waters. The surface

(Testimony of B. L. Wheeler.)

of this mill site was gone over, and Mr. Walker took a photograph during the examination. No improvements were made other than the two improvements mentioned, and there was no indication that the surface had ever been disturbed or used for mining or mill site purposes. [227]

The Sunset lode lies in the foothills of these same Vermillion Cliffs, the formation being of sandstone. It is about a half mile, mostly east, of the Sunset mill site, but over a rough sort of divide, or summit. The tunnel on the lode claim is at a lower elevation than the mill site. The United States location monument #3 on that claim was found and some of the patent corners. The tunnel on that claim returned in the survey is in the bottom of a gulch, and was examined as were the other workings. It is very badly caved in at the sixth set of timbers, and it was very difficult to get in through the tunnel. It was found to be about ninety feet long. The tunnel was in sandstone country rock its entire length, and showed no indications of mineral. There was no ledge at any point. It was all in red sandstone, and some gray sandstone interspersed in it. The formation is essentially the same on the lode claim as on the mill site, both red sandstone.

The general formation is the same, except that the mill site is mostly covered with wash, and the lode claim is in a steeper gulch wherein the rock is more exposed.

The mouth of the tunnel on the lode claim, as I recollect it, was a little bit blocked up, and there was

(Testimony of B. L. Wheeler.)

a pipe-line from that tunnel leading down the gulch in a southeast direction, not towards the mill site, but towards the foothills, the open valley. The location monument on that claim was found, or what was taken to be the location monument, it was found on the sandstone rock and was assumed to be the monument. There was no indication of any ledge or vein or any mineral at the point where this monument was found, or at any point on this claim.

The work on the Emmett claim is rather difficult to describe, but it can be best understood by the photograph which is already in evidence. It is a tunnel in a small valley, and there is only a foot or two of the tunnel now showing. It is essentially an open cut, which has been timbered over and made into a tunnel. The flat character of the ground where the excavation work was done is such as to preclude a tunnel. It goes to no depth whatever. The photograph above shows Mr. Walker at the [228] face of this excavation, and he was one hundred and fifteen feet away from the camera. In that distance there is a gain of only about twelve to fifteen feet in elevation, so that it could not be classed as a mining tunnel. The location monument was found, and in it the location notice, presumably the original one, showing that the claim was located by B. F. Saunders. I made a note, which I find in my notes: "The date was May 29th, 1905." I had copies of the location certificates with me, and that did not agree with the dates on the certificate, about a month's difference. In the tunnel on that claim,

(Testimony of B. L. Wheeler.)

there is a considerable amount of water dripping, and the pipe-line itself, out of that tunnel, leads down to the foothills or "bad lands." The remains of a watering trough were seen near the tunnel, and considerable loose piping lying around. There was also several surface cuts into the ground, one of which also had some piping emerging from it.

The tunnel, as can be seen from the picture, could not be examined inasmuch as it is too full of water, but on all parts of the claim, the examination was continued for mineral, and the formation is the same as on the other claims in House Rock Valley. That excepts the Jacobs lode of course. And no mineral was found at any point on that claim. I should mention that there was a second excavation just below the first one, apparently run under it, and had been abandoned, and the work started further up. That is the mouths of two tunnels are there, one below the other. I believe that is shown fairly well in the photograph.

This is the upper tunnel that I described. (Indicating on photograph.) One is just a few feet below the other. The lower tunnel is the first part of the excavation, and then it was continued farther up. They apparently dropped it. It is very difficult to describe these exactly as tunnels or cuts, because in the main tunnel, there is only about a foot or so of opening.

On this occasion I examined a number of lieu selections of which we had copies of the notices and descriptions, so as to tie them in and [229] find

(Testimony of B. L. Wheeler.)

their boundaries. The examination was made primarily to make a comparison to the mineral or non-mineral character of these claims and the patented and unpatented.

The only lieu selections examined on Buckskin Mountain was the North Lake and South Lake lieu selections, which covers the three small ponds locally known as Three Lakes. They are about a mile and a half from the Alaska lode, known as Mile-and-a-half lake. The formation is identical on the lieu selection with that on the Alaska lode, and we found on the other claims on the mountain that the formation is the same on Buckskin Mountain for miles and miles, all limestone or quartzite. There were the same ponds or depressions in that limestone on the lieu selections as there were on the mining claims.

The One-mile and House Rock lieu selection tracts, and they are within two miles of each other on the western edge of the Vermillion Cliffs, and the One-mile tract being in the same canyon and about 1200 feet from the Noonday lode, patented. The formation is exactly the same on all these tracts, the red sandstone which is typical of that country. The lands were run out and the tie was made to the Jacobs Pool spring, and it has the same general geology with reference to the Sunset lode, Sunset mill site and Emmett lode. There is no distinction between the character of the land from a geological standpoint. These claims, although they are about—that incorporation Emmett, Sunset, and Jacobs Pools, although they are about fifteen miles away,

(Testimony of B. L. Wheeler.)

are absolutely the same formation which is shown in the panorama picture of the Noonday lode.

The first claim is—the most southern one is the Crane lode, and from there to Jacobs lode is about eighteen or twenty miles north, that is the most northerly claim examined on the mountain or the Forest, and from there to the House Rock Group, it is about another eighteen or twenty miles, mostly easterly, down into House Rock Valley, and then from there it is about ten miles farther east to the Emmett, Sunset lode and mill site. So that it might be said to be roughly twenty-five or thirty miles north and south, and twenty-five miles east and west. The [230] claims in House Rock Valley are of entirely different elevation from the other claims spoken of on the mountain. The mountain is from seventy-five hundred to eight thousand feet elevation, and it is about two thousand feet lower in House Rock Valley.

The pipe-line from Two-mile tract down in the lower House Rock Valley is about four, five or six miles. It is the longest one I know of.

It was then stipulated by counsel that the testimony of the witness as to the condition observed on the ground, and his expert opinion, would be the same as that of Mr. Walker.

On cross-examination, the witness testified:

In respect to the Jacobs lode all that country on the mountain was the same geological formation and character—the same general geological formation and the same general type of country rock.

(Testimony of B. L. Wheeler.)

I examined a considerable amount of surface prospecting and mining work about a half a mile from the Jacobs lode. There are mineral deposits within a half a mile, but I don't think a person might strike a good claim there most anywhere. There might have been mines explored within a half a mile of Jacobs lode, as to whether they have turned out good or not I do not know. The condition at the Jacobs lode generally is not the same as it is at these places, or at these places where this mining had been done. The general formation is the same, but there is a distinct difference. The characteristic green stain and blue stain of copper is either shown there on the surface as croppings or in the workings. There are no such indications on the Jacobs lode. I would think that copper rock couldn't have been discovered on the Jacobs lode from the discovery cut. The other excavation is in the center of the pond, and of course I have never been in that excavation. There might have been copper taken out of that, but geologically there is a very slight possibility. The other excavation on the edge of the lake I state as my opinion that no copper came out of there. The excavation was examined and the dump. If there had been any copper there there would have been the characteristic green stain. I took some samples and had them assayed to verify my own personal opinion. I merely felt that it would be prudent and safer to [231] verify my opinion. I took them primarily for the purpose of having the evidence of assay for this case. I felt pretty confident what the

(Testimony of B. L. Wheeler.)

result would be. You can never be positive what an assay would show. I felt practically positive that there would not be any copper shown. But you never can tell when gold or silver will show. There was a possibility that gold or silver would show, but not a probability. I spent quite some time in examining the excavation, parts of two days, probably an hour one time and possibly a half hour or so next time—it's only thirty feet long.

The character of the examination was that the cut had been partly filled up with surface material. I made a very minute examination for the purpose of seeing whether there was mineral or not on the face and sides of the cut. There is no tunnel on Jacobs lode, it is an open cut, as shown in the picture. I think we examined practically both sides and the faces of the cut. We dug into the cut with a prospect pick and took samples along the sides and face of the cut, practically along the whole side. A good deal of soil formation is shown in the upper part.

Comparatively, we think we made a more minute examination of the Jacobs *lode* any of the other four or five patented claims, but the same character of examination was made on the others. We didn't take samples from each of the others because there was nothing to sample on the other claims. We didn't take any samples on any of the claims off the Forest Reserve. We examined the cuts carefully and the shafts, as much as they were, for the purpose of determining whether there were deposits of mineral, and also examined the general surface of

(Testimony of B. L. Wheeler.)

the claims as well. I always make it a practice to look at the dumps on claims and did so in this case. We examined them carefully where excavations could be carefully examined, as for instance on the Noonday lode. I paid more attention to the tunnels themselves, but I undoubtedly looked at the dumps also with considerable care.

Mr. SHERIDAN.—I have here the part of the diagram which was offered for identification before. I shall recall Mr. Wheeler for the purpose of seeing whether he put these markings on it, and if so when. This is the map that accompanied [232] the President's Proclamation of August, 1910.

It was marked Government's Exhibit No. 13 for identification.

The WITNESS.—I prepared that diagram and placed the markings that appear there other than those printed in the original proclamation, to be a part of my official report to illustrate their situation and their different character, and all the markings on that except the printed form were placed there by myself after I made that examination.

It was agreed between counsel that the note on the diagram, "approximate boundary of the area controlled for grazing through ownership of water" should be excluded.

The Government then offered the diagram in evidence.

Said diagram received in evidence, without objection, and marked "Government's Exhibit No. 13."

(Testimony of B. L. Wheeler.)

Mr. SHERIDAN.—I offer in evidence the President's Proclamation of August 23d, 1910.

Proclamation received in evidence and marked "Government's Exhibit No. 13-A."

**Testimony of T. C. Hoyt for the Government
(Recalled).**

T. C. HOYT, a witness on behalf of the Government, was recalled, and testified as follows:

I testified that on the south side of the Buckskin ranch there was water. Taking the top of the mountain Crane lake is the one of which I testified, and it would be some three to five miles from the pools and ponds I testified about, as I recall it now. I would say about five miles to the next permanent water south of the mountain. The lakes of which I spoke, namely, Three lakes, Franks lake, covered by the Alaska mill site, Mile-and-a-half lake, covered by the Alaska lode, East lake, covered by the Noonday lode unpatented; Crane lode, covering Crane lake; Franks lake covered by the Kane lode, and Snipe lake, all [233] lie to the south of Jacobs lake on the mountain. The next water south from the southernmost of these is approximately five miles. This water on the south side is between thirty and forty miles from Jacobs lake.

The claims named as covered by the locations, patented mining claims, and the lieu selections are the only permanent water, according to my knowledge and experience, in approximately somewhere from twenty to thirty townships of range. In that I in-

(Testimony of T. C. Hoyt.)

clude the waters covered by the unpatented mining locations as well as the patented. I am not sure I spoke of Soap Creek tract, the lieu selection lying to the east of House Rock Valley. I meant to include it and the Crane lode mill site. North from Jacobs lake it would be about fifteen miles in one direction to water and straight north; there is no water until you get to the Utah Line about thirty miles from Jacobs lake. The nearest water is fifteen miles from Jacobs lake in a general direction.

Mr. SHERIDAN.—The only other testimony we have to offer is the balance of Mr. Harris.

The COURT.—If counsel for the Government desires to present any further evidence on the admissibility of testimony of Harris I will hear it when the argument is presented, but for the present time I will adhere to my former ruling.

AND THEREUPON THE GOVERNMENT RESTED ITS CASE. [234]

Testimony of E. J. Marshall, for Defendant.

AND THEREUPON, the defendant, Grand Canyon Cattle Company, called as a witness, E. J. MARSHALL, who being duly sworn, testified as follows:

I am fifty-four years old and reside in Los Angeles, California. I have lived there eleven years. I was born in Baltimore, Maryland; lived there three or four years and went from there to Illinois, and then to Texas, and lived there about seventeen years. I was engaged in Texas first in the railroad business and latterly in banking and ranching. I was in the

(Testimony of E. J. Marshall.)

railroad business first as a clerk in the transportation department of the Gulf, Colorado and Santa Fe Railroad Company, now a branch of the Atchison, Topeka and Santa Fe Railroad Company, and latterly Assistant Master of Transportation. I became assistant cashier of the bank at Lampasas, Texas, on June first, 1889, when I went out of the railroad work. I then went to California and engaged in the banking, ranching and farming. When I say "ranching" I mean feeding cattle, grazing cattle. I have never been engaged in the mining business and have never had anything to do with mining and have no acquaintance with a mining country.

I first went to the Buckskin Mountains in June, 1907. I went there from Lund, Utah, and I met there on that occasion Mr. E. L. Clark, whose deposition has been read here. I met him as the representative of Mr. Saunders, and I then proceeded to the Buckskin Mountains with Mr. Clark.

I came to the ranch, I believe, during the first week in June. I left Los Angeles on the 31st day of May and I was a day going to Lund and possibly three or four days going to Buckskin Mountain. My purpose in going there was to inspect what is commonly known as the V. T. ranch for the purpose of buying it. I had some negotiations with Mr. Saunders before that looking to a possible purchase of the ranch.

When we got to the ranch we found Mr. Dimmick, the superintendent of the ranch, shortly after we reached the ranch. When I say "reached the

(Testimony of E. J. Marshall.)

ranch'' I refer to that part known as the most northerly place, commonly known as Jacobs lake. I don't recall just what hour we reached there, but Mr. Dimmick came within an hour or two, I should think. After Mr. Dimmick [235] came we looked over the improvements of what is known as Jacobs lake during the afternoon and evening. That is all the places we visited that day. In looking over the improvements I didn't go into any tunnel or examine any shaft or examine the character of the ground and gave it no attention at all.

The next day we left before daylight or about daylight and dropped off the mountain to the east into what is known as House Rock Valley. Mr. Dimmick, Mr. Clark and my son went with me. First we visited three places in House Rock Valley commonly known as House Rock springs, One-mile springs and Two-mile springs. The purpose of visiting these places was to look at the character of the water supply. We then went down to what is known as House Rock, which is a rock house, and there had lunch and changed horses. Then we moved easterly ever following the road to Lee's Ferry, and inspected what is known as the Pools or Jacobs Pools, and the corrals to the south of Jacobs Pools. We next went from there to what is known as the winter headquarters—Kane Springs, and stayed there one night. The next day we moved south to what is known as South Canyon corrals and back to Kane Springs for the night. The next day we moved up on the mountains into Pleasant Valley and on to what is known

(Testimony of E. J. Marshall.)

as the summer headquarters, V. T. ranch, and stayed there one night. Then we moved southerly to Bright Angel camp. I am in doubt whether we stayed there that night or whether we came back to V. T. Park. However, if we stayed there that night we came back the next day. I think we lunched at Bright Angel camp and from that moved westerly to look at the condition of the range and see more cattle and back to the V. T. Park the same night. From V. T. Park we left there the following morning on our way out by way of Three lakes, and we went to Three lakes and from there we went out. We didn't come back to Jacobs lode.

I now know the location of the patented mining claims in controversy in this action. The only one of those claims we visited on this occasion was Jacobs lake. I didn't go to any of the others. The closest we went to any of the others I should say was from a half mile to a mile. The only paper I had on the Buckskin Mountain was a map furnished me by Mr. Clark. [236] (Counsel handed map to witness.) That is the map I just referred to. There were no title papers displayed to me, nor did I have any on that occasion other than this map I have just referred to.

Mr. STEVENS.—We offer this map in evidence.

Map admitted in evidence and marked Defendant's Exhibit "A."

WITNESS.—(Continuing:) I had discussions or conversations with Mr. Clark with reference to the title of these properties, but not with Mr. Dim-

(Testimony of E. J. Marshall.)

mick. Mr. Clark furnished us with this map with a view of showing us the land owned and controlled by Mr. Saunders that went to make up the plant of the V. T. ranch. Mr. Clark was not able to tell me off-hand which, in House Rock Valley or at the foot of the Vermillion Cliffs, was the patented land, or the land located by scrip, but he was able to say to me that all of the land from which water was taken was owned by Mr. Saunders either through patents from the United States or from land on which scrip had been located. Mr. Clark made those representations to me. I attempted to have a discussion with Mr. Dimmick in relation to the title of the property. On Mr. Dimmick's joining us after his arrival at Jacobs lake when Mr. Stevens and Mr. Clark and Mr. Dimmick and myself were in the neighborhood of the corrals at Jacobs lake, I asked him some questions with reference to whether or not the Jacobs lake was patented land or whether it was a scrip location. His answer was "Mr. Marshall, I cannot answer that question because I have not the authority. I recognize Mr. Clark as Mr. Saunders' representative and his messenger advising me of your coming just reached me to-day. I have no word from Mr. Saunders that you were coming to inspect this property. I don't know what your mission is here and I think you must pardon me for not answering any questions that have anything to do with pointed matters. I must first have the authority of Mr. Saunders, whom I represent as superintendent." He said that at Mr. Clark's request he

(Testimony of E. J. Marshall.)

would gladly show us over the property, the cattle, the range, etc. I asked him if he would tell us as to the number of cattle and he said "No." He said he didn't have the authority. I found Mr. Dimmick to be a very close-mouthed man. I would regard him as unusually so. My subsequent [237] experience with him—I don't know whether it was reticence or stubbornness—but it finally resulted in his being deprived of his position with me. I never saw him but once after that and had no conversation with him. I may have had an ordinary conversation with Mr. Dimmick on my next trip to the ranch, but none about titles.

Neither Mr. Dimmick nor Mr. Clark said anything to me with respect to the character of any mining locations, whether they were good or bad or whether any development had been done properly or otherwise, nor did anyone else in my hearing say anything about that.

I subsequently entered into a contract with Mr. Saunders for the purchase of these properties. (Counsel shows document to witness.) That is the contract signed by myself and Saunders and Haley. The handwriting fixing the date on the head of the instrument is my handwriting.

Counsel for the Grand Canyon Cattle Company then offered the contract in evidence.

Contract admitted in evidence, and marked Defendant's Exhibit "B."

WITNESS.—(Continuing:) I had met Mr. Saunders before taking up with him the matter of

(Testimony of E. J. Marshall.)

the purchase of these properties, before I began negotiations with him about this property. I was at Salt Lake City in the late winter of 1906 and 1907. I called on Mr. Saunders because the year previous I had bought from him two or three thousand head of steers for the feed land on my Chino property in Southern California, and as I had never met him I called on him. I indicated to him then that I was desirous of getting a breeding proposition in the Utah country, because I liked the grade of cattle. He spoke of what he regarded as a very fine property in Nevada belonging to a widow by the name of Cleveland. The Buckskin Mountain property was not mentioned. The only business I had prior to this with Mr. Saunders was that of buying this bunch of cattle from him in the fall of 1906, and I never had any social or friendly relations with him at any time. [238]

At the time this contract was signed, July 30th, 1907, I paid Mr. Saunders on the purchase price fifteen thousand dollars.

I subsequently made a trip to the Buckskin Mountains in early September, 1907. The occasion of my going was more a pleasure trip than anything else, and I took two guests with me. Mr. Isaac Millbank and his brother, Mr. Nicholas Millbank. It was more like a camping trip and we went early in September—the first week. I met Mr. Dimmick there. I met Mr. Barney in Marysvale. He was the driver of his own outfit and wagon, carrying the cook and the cook's supplies and bedding. I had no conver-

(Testimony of E. J. Marshall.)

sation with Mr. Barney at all with reference to this ranch. At that time our trip was confined to the ridge of Buckskin Mountain, and Mr. Dimmick went with me, but I had no conversation with Mr. Dimmick at that time with respect to the property. We reached Jacobs lake and spent the night. We were in a four-horse outfit, Mr. Stevens driving, and then I took charge of the four-horse outfit and Mr. Stevenson accompanied Mr. Dimmick on horseback. We drove over from Jacobs lake the following day to V. T. Park and spent the night there. The following day we went to Bright Angel camp and spent two nights. We then went back to V. T. Park and spent another night; then down the canyon to Ryan where we camped for the night. Then a day's drive to Kane Beds where we spent the night, and then we drove out to Lund and Barney and his outfit drove back to Marysvale. I didn't on that occasion visit any of these mining claims.

As a result of my two visits to this property I got no impression at all of these patented mining claims as to their mineral features. My examination of those lands was not with any reference to mineral. There was no statement made to me by anybody with respect to their mineral character or in respect to their development.

I am now president of the Grand Canyon Cattle Company, and became president on the 29th day of November, 1907. I succeeded Mr. Henry Stevens as president. Mr. Stevens was elected at the organ-

(Testimony of E. J. Marshall.)

ization of the company, and I believe the charter was dated October 4th, and the organization meeting was on October 30th, or thereabouts. By the organization I [239] mean the election of the directors and officers of the company. There had been no officers prior to that time and the company had done nothing.

(Counsel handed paper to witness.) That is a paper signed by me and delivered to the Grand Canyon Cattle Company at the date that it bears.

Counsel for the Grand Canyon Cattle Company then offered the document in evidence.

Document received in evidence and marked Defendant's Exhibit "C."

WITNESS.—(Continuing:) The contract referred to in that document is the contract of July 30th, 1907, made between myself and Saunders and Haley and is the contract that has been called to my attention.

The fifteen thousand dollars which was paid by me to Mr. Saunders was repaid to me by the Grand Canyon Cattle Company. After the execution of the contract mentioned I went to Salt Lake City with reference to this transaction, on the 2d, 3d or 4th of December, I don't remember exactly, but I think it was the 4th of December. The deeds which have been introduced in evidence I think were dated the 5th, as my time was very short and we worked until three o'clock in the morning of the 5th. Prior to the execution of these deeds and the payment of

(Testimony of E. J. Marshall.)

any more money I consulted an attorney in the matter—Mr. Critchlow, formerly of the firm of Pearce and Critchlow. At that time Mr. Pearce was Assistant Secretary of the Interior. I think Mr. Critchlow was practicing law, but I don't recall. I don't remember the name of his firm. I know I went to Mr. Critchlow.

There was furnished me for the use of the attorney whom I named an abstract of title.

(Counsel hands abstract to witness.) That is the abstract, and that was furnished to my attorney.

Counsel for the Grand Canyon Cattle Company then offered the abstract in evidence.

Abstract admitted in evidence and marked Defendant's Exhibit "D." [240]

WITNESS.—(Continuing:) I asked the attorney this question: "Is a patent from the United States Government on a mining claim to be regarded in the same way as a patent to a homestead or a desert claim, or are all United States patents on the same plane." His answer was "Yes." I was assured by my attorneys that I could purchase these patented claims safely. That was my advice from my attorney, Mr. Critchlow. After I received this communication from my attorney I then proceeded to have the transaction closed, and the deeds executed. I paid up there thirty thousand dollars in cash on behalf of the Grand Canyon Cattle Company and by them. It was in the heart of the panic. There were notes executed at that time other than

(Testimony of E. J. Marshall.)

the four promissory notes, aggregating one hundred and two thousand dollars, which were referred to in the mortgage introduced by the Government. The other notes were for \$65,150, and were executed by the Grand Canyon Cattle Company. They were in the usual form of negotiable promissory notes and ran for sixty days. There were six of those notes. I have not those notes now. I have made search for them but I don't know where they are. I assume that they were destroyed pursuant to the practice of destroying cancelled promissory notes. Those notes were paid by the Grand Canyon Cattle Company in the full amount, together with interest and exchange charges. One of them was paid a few days before maturity and the balance either at or a short time afterwards. All those notes were dated December 5th, payable sixty days after date.

The four notes secured by the mortgage which aggregated something like one hundred and two thousand dollars were fully paid with interest by the Grand Canyon Cattle Company before maturity.

(Counsel hands paper to witness.) That document appears to be signed by Saunders and Haley and the Grand Canyon Cattle Company by myself. It was signed by me and by Saunders on December 5th, 1907.

Counsel for the Grand Canyon Cattle Company then offered the document in evidence.

Document admitted in evidence and marked Defendant's Exhibit "E." [241]

(Testimony of E. J. Marshall.)

WITNESS. — (Continuing:) There was an agreement made between me and Saunders and Haley as to the number of cattle which should be considered as a basis of the purchase price. That agreement was made in Salt Lake City on December 5th, 1907. The agreement was not in writing beyond the contract of July 30th. The number of cattle that was agreed upon was ten thousand head. Those six promissory notes were executed as part of the purchase price.

I saw Mr. Dimmick in Salt Lake on that occasion. The last time I had seen him before that was in September on the Buckskin Mountain on the occasion of the second visit, and I hadn't seen him at any other time than those two occasions until I saw him in Salt Lake City. In September, on the occasion of my second visit, I asked Mr. Dimmick whether he would be willing to remain with me as superintendent of the ranch. His answer was that he thought he would, that he would at least until spring; that he hadn't been off the mountain for several years and he would like a little vacation before he took up his duties. That was all the conversation I had at that time. I had a conversation with him afterwards in Salt Lake City on the occasion of the execution of these papers. That conversation was on the 5th of December after all matters were closed and after the deeds were signed, and he was at that time engaged and his salary fixed and he was to depart that night or the next morning for the ranch. His duties were to be that of superintendent of the

(Testimony of E. J. Marshall.)

cow ranch, looking after the cattle and the water and the range conditions. He was to have no power to purchase anything or sell anything at that time other than supplies for the ranch. His salary began from December 1st, 1907. He probably didn't reach the ranch until about December 10th—until December 31st, 1910. He was not in my employ at the time his deposition was taken in this case. He had been discharged by me for insubordination. His employment began and his salary dated from the first of December, 1907. The statement of Mr. Dimmick in his testimony that he was paid from November 15th is not correct. [242]

Mr. Dimmick never had any authority from the Grand Canyon Cattle Company to draw any checks on any bank. He signed all pay checks which were drawn on the treasury of the Grand Canyon Cattle Company at Los Angeles. He had authority to sign checks of a similar nature to freighters in freighting in supplies. The custom was to advance them some money inasmuch as the freighting was two hundred miles. His checks were in the nature of an advance for freight charges, and then when the freighting was through a check for the balance was figured on a tonnage basis. There was no written contract or agreement with Mr. Dimmick as to what his authority was. It was all oral, or in the nature of letters. I have none of the letters with me, and assume that they are in the files of the Grand Canyon Cattle Company at Los Angeles.

Mr. Dimmick, while he was in my employ, never

(Testimony of E. J. Marshall.)

did anything for the Grand Canyon Cattle Company other than to look out for the cattle and the grazing and the water and make such improvements as he was authorized to make, after first being passed upon by the Board of Directors of the Grand Canyon Cattle Company. He was not authorized to make any improvements except those authorized by directors.

Mr. Saunders didn't retain any interest in this property that was sold to me, and he has never had any interest since.

Mr. Saunders died in the summer of 1909, sometime after the 4th of July.

There were no papers shown to me at the time I was in Salt Lake City, or any other time which showed the character of these titles other than this abstract. I have never seen the nonmineral affidavits, and never even knew of their existence.

I have had experience in the matter of buying cattle ranges and property of that kind. I bought the Chino ranch, the Jesus Maria ranch in Santa Barbara County, California, in 1904, consisting of 42,000 acres. That was a Mexican ranch. I bought the Chino ranch in 1905, consisting of 48,000 acres. The third property I bought in the way of a ranch is the Grand Canyon Cattle Company ranch, or what is known as the V. T. ranch. [243] I bought the Palomas of Wood-Haggenbarth Company, Ltd., of Salt Lake City, of two million acres, lying in north-erly Chihuahua, the north boundary of which is the north boundary line for one hundred sixty miles

(Testimony of E. J. Marshall.)

west of El Paso, in 1909. I bought the Santa Rosa ranch, of Santa Barbara County, of forty-five hundred acres, in 1913. I believe the price which I paid for the properties conveyed to me by Saunders and Haley was a fair price.

The first I heard of any claim made by anybody, Government, or anyone else, as to anything fraudulent, wrong or irregular in the location of any of these claims was when this suit was brought. I don't think I had any knowledge whatever as to any question being raised by anyone with respect to the validity of these claims until this suit was filed. I feel quite sure that I heard nothing concerning such frauds until this suit was brought. I knew nothing about whether the ground embraced in any of these patented claims was mineral ground when I made this inspection, nor have I since learned. 50.